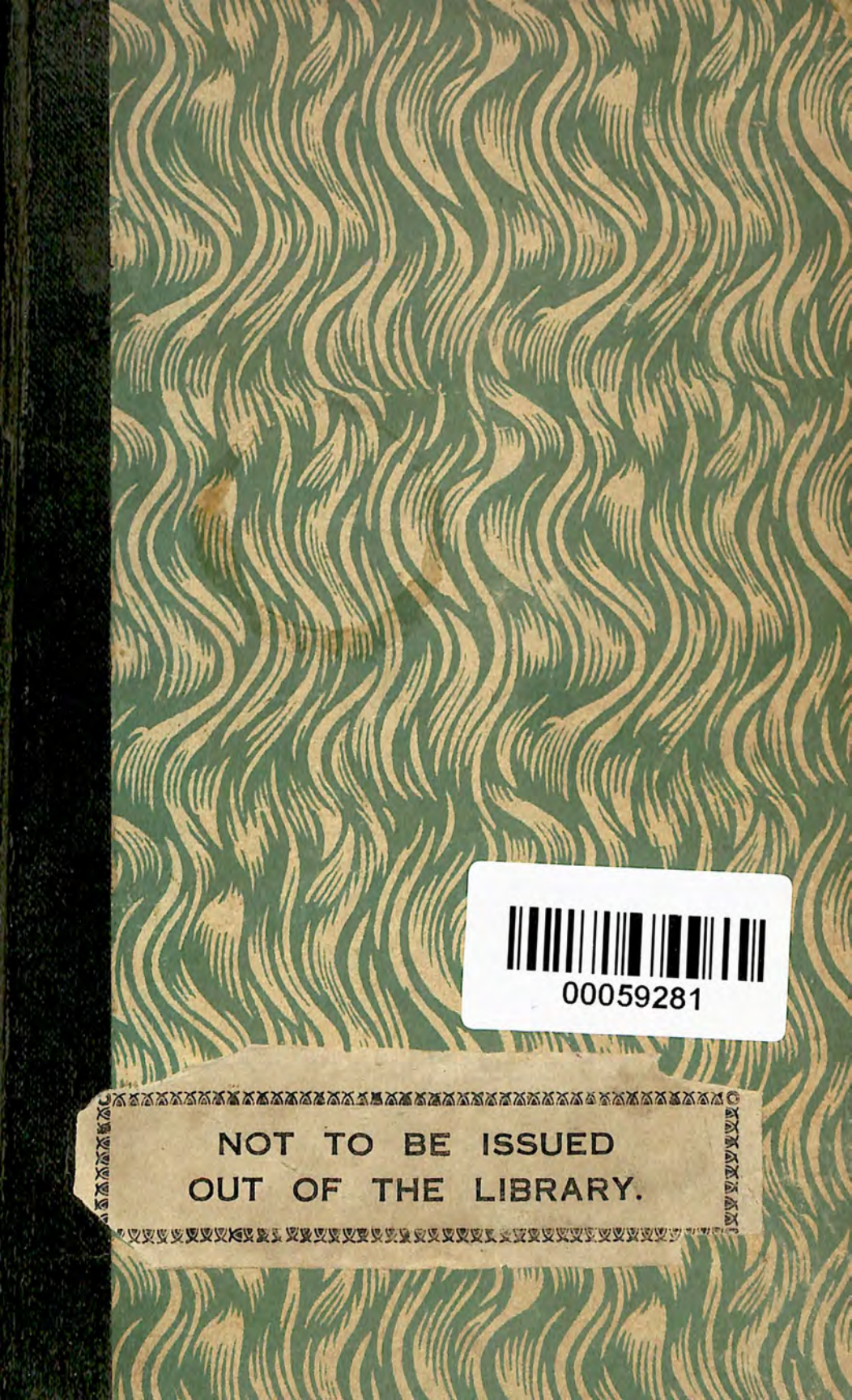
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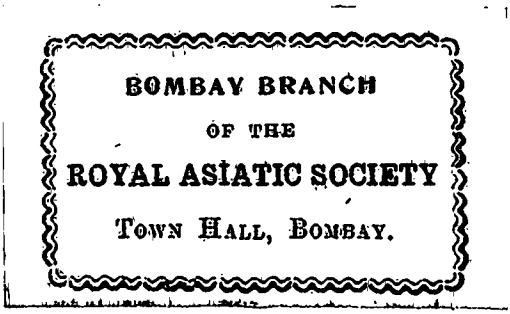

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THE

WHOLE WORKS

OF THE

RIGHT REV. JEREMY TAYLOR, D.D.,

LORD BISHOP OF DOWN, CONNOR, AND DROMORE:

WITH A LIFE OF THE AUTHOR,

AND A CRITICAL EXAMINATION OF HIS WRITINGS

BY THE

RIGHT REV. REGINALD HEBER, D.D.,

LATE LORD BISHOP OF CALCUTTA.

REVISED AND CORRECTED

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FELLOW OF ORIEL COLLEGE, OXFORD.

IN TEN VOLUMES.

VOL. X.

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DUCTOR DUBITANTIUM.

OR,

THE RULE OF CONSCIENCE.

THE THIRD BOOK.

OF HUMAN LAWS, THEIR OBLIGATION AND RELAXATION; AND OF THE COLLATERAL, INDIRECT, AND ACCIDENTAL BANDS OF CONSCIENCE.

CHAP. I.

OF HUMAN LAWS IN GENERAL, AND WHAT OBLIGATION THEY PASS UPON THE CONSCIENCE.

RULE I.

THE CONSCIENCE IS PROPERLY AND DIRECTLY, ACTIVELY AND PASSIVELY, UNDER PAINS OF SIN AND PUNISHMENT, OBLIGED TO OBEY THE LAWS OF MEN.

§ 1. THAT the laws of God and man are the great measures of right and wrong, of good and evil, of that which is to be followed and what is to be avoided in manners of men and the entercourses of societies, is infinitely certain and universally confessed. Since therefore human laws are one moiety of the rule and measure of conscience, and that we are bound to obey our lawful superiors in what they command, it is naturally consequent to this that we acknowledge the conscience bound, and that in human laws as well as in divine, though according to their several proportions, the conscience ought to be instructed. And indeed there is more need of preachers in the matter of divine laws, and more need of wise and prudent guides in the matter of human laws. For the laws of God are wiser and plainer, few and lasting, general and natural, perceived by necessity, and understood by the easiest notices of things; and therefore men have more need to be called upon to obey, than taught how; and therefore here the preacher's office is most necessary and most required. But human laws are sometime intricate by weakness, sometimes by design, sometimes by an unavoidable necessity; they are contingent, and removed far from the experiences of most men; they are many and particular, difficult and transient, various in their provisions, and alterable by many parts and many ways: and yet because the conscience is all the way obliged, she hath greater need of being conducted than in the other, where every wise man can better be a guide in the little intrigues, and every child can walk in the plain way.

§ 2. But our first enquiry is, whether the conscience be obliged or no. For if conscience be not, then nothing is concerned but

prudence, and care that a man be safe from the rods and axes: but then the world would quickly find that fear would be but a weak defence to her laws; which force, or wit, or custom, or riches would so much enervate, or so often evacuate. And therefore the greatest case of conscience in this whole matter is, whether it be a matter of conscience as well as of prudence and security to obey the laws of man. And this question is so dubious and unresolved, that Cajetan and Henricus de Gandavo did suppose it fit to be determined by the pope *in cathedra*, as thinking it otherwise to be indeterminable. The reasons of doubting are these;

§ 3. 1) Because God only is Lord of consciences, He only can discern the secret that is there, and He only can punish there; and therefore to suppose any band upon conscience from human laws, would be to divest God of His royalty: none but He who is καρδιογνώστης, 'the searcher of the heart' and mind of man, can give laws to it; for none else can take cognizance, or give a compulsory.

§ 4. 2) The conscience is seated in the understanding (as I have already proved[a]); but that is an imperious faculty that acknowledges no superior but God; because He only being infallible, He only can instruct and inform it rightly, none else can have power over it. For the understanding hath a proper way of being ruled: the will is ruled by empire, but the understanding by doctrine; that is governed by command, this by argument; the will by power, the understanding by truth: now because God only is truth, and every man a liar, God only can rule the understanding, which is the court of conscience.

§ 5. 3) To submit the conscience to any law or power of man, is to betray our christian liberty: for Christ having set us free from all the bondage even of that law which God himself made and gave to Moses, He having alleviated the burden of rites and ceremonies, and left the Jews at liberty to be governed as they pleased themselves, would not take off the laws of God to impose upon us the laws of men; and there is no such thing as christian liberty but a freedom from the law of Moses, and the law of carnal ordinances, and the laws of men; for that which the preachers speak of, a liberty from sin, and from hell, and the grave, α) This is rather a deliverance than a liberty, a rescue from an evil of another nature, not a state of freedom and ease. β) As many men have ordered their theology, we are so far from having a liberty from sin, that they have left us nothing else but a liberty to sin: and indeed we have no liberty or freedom from sin as long as we are alive, but we are always in war and contention, which is worse than death; and so many men are always captive under sin, and all men do so often obey it, (and "his servants we are to whom we do obey[b],") that we have little reason to boast of christian liberty in that sense. γ) S. Paul using the word 'liberty,' and speaking of the advantages of Christians in this, instances it only in being freed from those ordinances of Moses, and

[a] Lib. i. chap. i. rule 1. [vol. ix. p. 3.] [b] [Rom. vi. 16.]

the impositions which some philosophers or some sects of men would bring upon the conscience. δ) Liberty from sin, or christian liberty in this sense, is nothing but a tropical expression, a metaphor and similitude, and therefore is not that real privilege by which we were materially advantaged upon the publication of the gospel of Christ. The result of which considerations is, that all Christians are free men, servants of Christ, and none else; it being an express commandment, and that strengthened with a reason, "Ye are bought with a price, be ye not the servants of men[c];" which at least must be understood of conscience and the mind of men.

§ 6. 4) For granting it to be lawful for men to make laws, yet that these laws cannot bind the conscience it appears plainly in this, that whatever laws of the church are made concerning any rite or ceremony, let it be never so necessary or fitting that they be obeyed, yet the things do not become intrinsically necessary; and therefore are not to be thought so, lest, expressly against the commandment of our blessed Saviour[d], we 'teach for doctrines the commandments of men.' To keep holidays may be very good, so that we observe them to the Lord, but he that thinks it necessary and a direct duty, wrongs his own conscience; which demonstrates that conscience is free when every thing else is bound. You may fast when you are commanded by your superior, but you must not think that fasting is a part of the divine service; that is, though man commands fasting, yet God does not: and then if man of himself does bind the conscience, he hath a power equal to God, and can make divine commandments: but if man cannot do so, then the conscience is free, and not tied by human laws.

§ 7. 5) If human laws do bind the conscience, then it is put into the power of man to save or damn his brother; not directly, but upon the consequence of his obedience or disobedience, which is all that is done by the laws of God; and men shall have power to make more ways to the devil, to make the straight way to heaven yet straighter, and the way to hell, which is already broad enough, yet wider and more receptive of miserable and perishing souls.

§ 8. 6) Christ is the "author and finisher of our faith[e]," and so of every grace; that is, He only can give it, and He only can take it away. Since therefore that which makes a sin destroys the grace, no human authority can make an action to be a sin; because no human power can dispose of grace or take it away.

§ 9. 7) In the instance of civil power and civil laws the case is more certain, for this reason, because the civil power cannot remit sins, therefore neither can they bind to sin; and from hence it will follow, that supposing ecclesiastical laws do bind the conscience, yet the civil cannot. But then as for the ecclesiastical power and laws, they also are as invalid upon another account, because the church having no external compulsory, can only bind in those things where

[c] [1 Cor. vii. 23.] [d] [Matt. xv. 9; Mark vii. 7.] [e] [Hebr. xii. 2.]

God hath already bound; and therefore can make no laws of her own, but what are already made by a higher power, and consequently cannot bind to sin, but there where the conscience is already bound by God. And if the church should inflict her censures for any thing that were not of itself a sin against God, as for not paying the fees of the spiritual court, for a poor man's working for his living upon a holiday, the world would cry out of her; which shews that where God hath not bound the conscience, neither the ecclesiastical nor the civil power can.

8) If human laws do directly bind the conscience, then it is as great a sin to transgress a law of man as to break a law of God; with our bare foot to touch the ground within the octaves of Easter, as to call our brother fool; to eat flesh on friday as great as to commit fornication: which consequent because it is intolerable, so also is the opinion that infers it. The conclusion is, in Christ Jesus there is neither high nor low; that is, christian religion hath no hand in this heraldry of *secundum, sub, et supra;* but whatsoever difference of person, of order, and of government is amongst us, is by agreement: it is, as S. Peter[f] calls it, ἀνθρωπίνη κτίσις, 'the ordinance of man;' and for man's sake it is to be obeyed: but the conscience is still at liberty where only the commandment of man does intervene.

§ 10. This opinion is taught by Fernandus Vasquius, a Spaniard, and he affirms that all the gentlemen and common people of Spain (the scholars only excepted) are of this opinion: it was also taught by some of the scholars of Calvin, and some Lutherans, by all the anabaptists of Germany of late, and that upon the strength of the first, the third and fourth argument; and formerly by Jacobus Almain and John Gerson, by Felinus, Cajetan, and Navarre, but they mean only the civil laws of princes, upon the confidence of the sixth and something of the seventh argument; all which I have thrust forward as far as the nature of the question would bear, and added some more: which I have done, not that these arguments ought to prevail, but that by the examination of them this great question may have right done it, by being rightly stated and fully cleared.

§ 11. 1) First therefore to the main enquiry, it is certain as an article of faith, as necessary as any other rule of manners, that every subject is bound to obey the just laws of his lawful superior, not only under fear of punishment from man, but under pain of the divine displeasure. *a*) Because the power by which men make laws is the power of God: "By Me kings reign, and the lawgivers decree justice," says the Wisdom of God[g]; that is, the Son of God, the Wisdom of the Father, to whom He hath given all power in heaven and earth; He it is by whom, that is, by whose power and wisdom, kings reign. For this is the wisdom, ἦν Θεὸς ἔκτησε ἀπ' ἀρχῆς, 'which God possessed from the beginning.' The LXX[h] reads it ἔκτισε, *cre-*

[f] [1 Pet. ii. 13.] [g] [Prov. viii. 15.] [h] [ver. 22.]

avit, 'which God created from the beginning;' and this word the Arians make use of to their evil purposes, but very weakly and against the faith of the original, where it is קָנָה, *kanan, possedit.* This eternal Son of God and the Wisdom of the Father, the King of kings and the Lord of lords, is the original of all human power, and this is nothing but a derivative from Him. 'For power is given you of the Lord, and sovereignty from the Highest[i];' and 'ye are ministers of His kingdom.' And S. Paul[j] expressly and dogmatically affirms, "There is no power but from God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God." So that the legislative or supreme power is not the servant of the people, but the minister, the trustee and representative of God. *β)* The power of the sword is only from God; for since no man is lord of his own life, no man hath power to kill himself, neither hath he power to warrant any man else to do it; for what he may not do himself, he cannot commission and empower any one else to do. *Vindicta mea,* saith God, 'Vengeance is mine, I will repay[k];' and it is God's sword with which the magistrate strikes; and therefore kings and potentates are Θεοῦ λειτουργοὶ, and Θεοῦ διάκονοι, ἔκδικοι εἰς ὀργὴν, 'God's deputies and ministering officials, in His name to be the avengers of His wrath:' and as Christ said to Pilate, 'Thou couldest have no power unless it were given thee from above[l],' may be said to all just human powers; it is given them from above, not from beneath, from God, not from the people. The consequent of which is this, if it be God that strikes and pays vengeance by the hand of the magistrate, then it is God who is offended when the law of the magistrate is violated; for whoever strikes is the party injured; and the magistrate being God's minister, as he is the less principal in the justice done, so also in the injustice suffered. *Dixit Deus quia dii estis,* it is God who 'hath said' to the magistrates that 'they are gods,' that is, in the place of God: by His authority they strike, and He is the injured person; and therefore he who is so smitten by the sword of God, is a sinner against God, for He punishes none else. *Patet culpa, ubi non latet pœna,* 'if God punishes, it is certain man hath sinned,' said S. Austin[m] and S. Prosper[n]. The one is the indication of the other.

§ 12. But the thing is expressly affirmed by the scripture, for having dogmatically and fully signified that all human just power is τοῦ Θεοῦ δύναμις, διὰ τοῦ Θεοῦ, ἀπὸ τοῦ Θεοῦ, and ὑπὸ τοῦ Θεοῦ, they being the several expressions of Solomon according to the LXX, and of S. Paul in his own words; it is not content to leave us to find out the consequence of these, but literally affirms the main articles.

[i] [Wisdom vi. 3, 4.]
[j] [Rom. xiii. 1, 2.]
[k] [Rom. xii. 19.]
[l] [John xix. 11.]
[m] L. i. retract. c. 9. [tom. i. col. 14.]
et ep. cv. ad Sixtum. [al. cxciv. tom. ii. col. 722.]
[n] Cap. 20. lib. contr. collatorem. [al. cap. 9. col. 320 C. fol. Par. 1711.]

So S. Peter[o], "Be ye subject to every ordinance of man, διὰ τὸν Κύριον, for the Lord's sake;" which S. Paul[p] speaks yet more explicitly, "Wherefore it is necessary that ye be subject, not only for wrath, but also for conscience sake." *Sicut Christo*, 'as to Christ, so be obedient to your masters or temporal lords;' so the same apostle: that is, by the same necessity, for the same reason, to avoid the same punishment, to have the same reward, and by the force of the same religion, and that you may not prevaricate the laws of God or do violence to your conscience. Nothing can add light to these so clear words: they are bright as the sun, certain as an article of faith, clear, easy and intelligible, according to the nature of universal divine commandments. S. Chrysostom[q] and Theodoret[r] urging these precepts, say, that we are not to obey out of courtesy, but of duty; not out of liberality, but necessity; that is, according to S. Ambrose[s] and S. Austin[t], the fearful pains of hell and eternal damnation attend them that disobey.

And this whole matter is infinitely demonstrated in this one consideration: the laws of man do so certainly bind the conscience, that they have a power of limiting and declaring, and making the particulars to become the laws of God. For though the divine law forbids murder, yet the law of man declares concerning the particular, that it is, or it is not, murder; and by such declaration, by such leave or prohibition respectively, makes it so. In Spain, if a wronged husband or father kill the deprehended adulteress, it is no murder; in England it is. For in Spain the husband or father is permitted to be executioner, where notoriety is declared to be sufficient conviction: here they are not trusted with it, and the judge and the executioner are persons vastly removed. If a law[u] forbids me to take my own goods from a thief, it is theft to do it, but it is no theft if the law permits[x]. It is incest for the uncle to marry with his niece: it is so where the laws have made it so, but it is not so of itself, for it was not so always. Since therefore human laws can constitute an action in the habitude of a divine law, it is beyond all question, it does oblige the conscience.

§ 13. 2) This obligation is passed upon the conscience, and there is this necessity of obeying: not only in case human laws be first given by God *in thesi*, or *in hypothesi*, that is, in words or in sense,

[o] [1 Pet. ii. 13.]
[p] [Rom. xiii. 5.]
[q] In loc. [hom. xxiii. tom. ix. p. 687.]
[r] In loc. [tom. iii. p. 136, 7.]
[s] In loc. [tom. ii. append. col. 99.]
[t] Ep. liv. ad Maced. [al. epist. cliii. cap. 6. tom. ii. col. 531.] Vide etiam S. Hieron. in c. 3. ad Titum. [tom. iv. part. 1. col. 434.]
[u] Cap. 'Placuit.' [Gratian. decret., part. 2. caus.] xvi. qu. 6. [can. 2. col. 1253.] et in l. 'Exstat.' ff. 'Quod metus causa.' [Digest., lib. iv. tit. 2. § 13. col. 104.]
[x] Gloss. in cap. 'Jus gentium.' [Gratian. decret., part. 1.] dist. i. verbo 'Sedium.' [col. 5.] et [part. ii. caus.] xxiii. quæst. 2. capp. 1, 2. [col. 1405, 7.] l. 'Ait prætor,' § 'Si debitorem,' ff. De his quæ in fraud. creditorum. [Digest., lib. xlii. tit. 8. l. 10. Gothofred. corp. jur. civil., col. 1438.]

in direct affirmation or just consequence, in substance or in analogy; but though the matter of the law be in its own nature wholly indifferent before the sanction and constitution. The first conclusion I intended against the anabaptist, and this second against Gerson, Almain, and the dissenting sectaries: and of the truth of it we have an instance in the person of S. Paul, who by his apostolical authority gave an injunction[y] which hath ever since been an ecclesiastical canon; and yet he alone and not the Lord gave the word, 'that a believing wife or husband should not depart from their unbelieving' correlative, if he or she respectively desired to stay. It was a matter in which Christ had not at all interposed, but S. Paul made it a law to the christian churches; and whoever shall prevaricate it shall bear his burden. And indeed it were a vain thing to suppose that all human laws were derived from the law of nature, or the divine positive; or that those which were not so derived could not be good and reasonable, and that the authority binding them were incompetent. For whatsoever is derived from the law of God, cannot by men admit variety, nor suffer diminution, or go into desuetude, or be extinguished by abrogation; and then it would follow that no king could command any thing but what was necessary before he commanded it; and nothing could be a law to the Persians, but what also did oblige the Greeks; and nothing could bind in the hundred and twenty-fifth olympiad but what was decreed before the days of Semiramis, and there were no law but those of the Medes and Persians; and there could be no provisions made for new necessities, and the government of commonwealths could never be improved by experience, and all lawgivers were as wise at first as ever they could be. All which are such foolish consequences, that it must be granted, that whatever human power can justly ordain, or prudently, or necessarily, or probably, all that is bound upon the conscience of the subject certainly and to all events as the laws of God himself. And therefore Plato said well, that 'before the law is made men may judge of it, but after the sanction not at all;' that is, it is so indifferent in its nature, that it is fit to be considered and disputed; but when it is made a law, there remains nothing but a necessary obedience. And to the same purpose Aristotle[z] largely discourses; for when he had divided the civil law, πολιτικὸν δίκαιον, into φυσικὸν καὶ νομικὸν, the 'natural' and the 'constituted,' he says, νομικὸν δὲ, ὃ ἐξ ἀρχῆς μὲν οὐδὲν διαφέρει οὕτως ἢ ἄλλως· ὅταν δὲ θῶνται διαφέρει, 'the law that is not natural but decreed by man, in the beginning it matters not whether it be made or no; but after it is made it is a great matter whether it be kept or no.' But this whole affair is put beyond all scruple by the words of the apostle[a], 'Obey your masters, not only the good and gentle, but the morose and harsh;' that is, not only if what he commands

[y] [1 Cor. vii. 12.]
[z] Lib. v. Ethic. Nic., cap. 10. [tom. ii. p. 1134.]
[a] [1 Pet. ii. 18.]

be in itself good and fitting, but if it be troublesome and uneasy, and unnecessary; any thing, so it be not unlawful: for every thing that God hath not forbidden, can be bound upon conscience by a lawful superior. Either therefore all human laws are nothing else but commentaries on scripture or the natural law, or else are wholly unnecessary, as being nothing but repetitions of the divine laws: and there can be no new law made, or if there can, it must bind the conscience; for all other things bind the conscience by themselves, and without human constitution. If therefore any human constitution, as such, can bind the conscience, it must be of such instances which either are derivatives from the law of nature, or of things which before the law did not bind at all, that is, of things which in their own nature are indifferent.

§ 14. 3) That human laws bind the conscience does not depend upon the intention of the lawgiver; for when the arrow is shot out of the bow, it will hit or miss by its own force and order, not by the intention of the archer: and no lawgiver can make a law with a purpose not to oblige the conscience. In the reign of queen Elizabeth this question was much talked of, and little understood; and some discontented recusants under the government of the church of England had so talked the laws themselves out of countenance, that the legislative power durst scarce own the proper obligation of an ecclesiastical, or of a law relating to any thing of religion; insomuch that when the wisdom of the state thought fit to confirm the ancient laws of ecclesiastical fasts, they superadded this proviso; that if any one should affirm that these laws were intended to bind the conscience, he should be punished like the spreaders of false news: and the *jejunium cæcilianum*, the wednesday fast, was made without such obligation. Now this is plainly to them that understand it a direct artifice to evacuate the whole law: for a law that is made without intention to bind the conscience is no law at all; for besides that it is a plain giving leave to any man to break it that can do it without observation, or can bribe the officers, or is bigger than the informers, or not easy to be punished, or that dwells alone, or that is himself a minister of the law, besides this, I say, it is directly no law at all. For all human power being derived from God, and bound upon our consciences by His power, not by man, he that says it shall not bind the conscience, says it shall be no law, it shall have no authority from God; and then it hath none at all: and if it be not tied upon the conscience, then to break it is no sin, and then to keep it is no duty: so that a law without such an intention is a contradiction; it is a law which binds only if we please, and we may obey when we have a mind to do it; and to so much we were tied before the constitution. But then if by such a declaration it was meant, that to keep such fasting-days was no part of a direct commandment of God, that is, God had not required them by Himself immediately, and so it was (abstracting from that law) no duty evangelical, it had been

below the wisdom of the contrivers of it; for no man pretends it, no man says it, no man thinks it: and they might as well have declared that that law was none of the ten commandments.

§ 15. 4) Though human laws do not bind the conscience by the intention of the lawgiver, but by the command of God, yet God does bind the law upon the conscience according to the intention of the power that decrees it. For though a father cannot command his son to do a lawful and fitting service, and by his intention make that the disobedient son shall not sin against God, because he cannot make disobedienee to be no sin; yet by intending less obligation in the law, he makes the crime imputable in a less degree; that is, the authority is the less despised, there is less evil consequent, the mischief is small, the inconvenience little. And therefore the doctors of the canon law do to very little purpose trouble this question with enquiries after signs, when the intention of the lawgiver is to bind to mortal, when to venial sins. For besides that the distinction itself is trifling according to their understanding of it, (of which I have given a large account in a discourse on purpose[b],) and besides that the commands of heathen parents, and masters, and princes, who knew nothing of that distinction (if it had been right) did nevertheless bind their subjects to obedience under pain of sin; besides these, I say, the lawgiver does not at all make it a sin or no sin: he only intends it should be kept, and to that purpose binds it with penalties, and consequently and indirectly binds the conscience: but God binds the conscience properly and directly; for the law is divine in respect of the power and authority, but human in respect of the matter and the instance: and that is the meaning of these words put into the rule. The conscience of man is by God's law properly and directly bound to obey the laws of men; not indirectly and by the consequence of some other duty, but by a commandment and the purposed solemn declaration of His will in this affair. But this I shall more fully explicate in my answer to the opposite arguments. Now because although the lawgiver's intention does not directly make the disobedience to be sin or no sin, yet because indirectly it hath influence upon the action and the conscience of the subject, it is useful that I set down the rules and measures of the difference; and how we may guess (for it can be no more) at the distinct obligations which from the diversities of human laws are passed upon the conscience.

RULES OF DISTINCTION, OR THE MEASURES BY WHICH WE SHALL PRUDENTLY CONJECTURE AT THE GRAVITY OR LESSENING OF THE SIN OF DISOBEDIENCE TO HUMAN LAWS.

§ 16. 1) He that breaks a law which is established upon great penalties, commits a great sin; because it is regularly to be presumed

[b] Unum necessarium, chap. 3. [vol. vii. p. 83.]

that the supreme power puts much upon it, when he is so earnest for its observation. *Rem quæ culpa caret, in damnum vocari non convenit,* saith the law, *cap.* 2, *de constit.*[c]: 'if there be no fault there ought to be no punishment;' they are relatives, and correspond also in their very degree. *Quis dubitaverit hoc esse sceleratius commissum, quod est gravius vindicatum?* saith S. Austin[d]; 'if the punishment was more grievous, the wickedness also was the more intolerable:' *ut juxta mensuram delicti sit et plagarum modus:* that's the measure of punitive justice, 'that the number of the stripes be according to the measure of the iniquity.' And concerning those things where there is any doubt, the subject is not to judge whether the law be very necessary or no; but to judge concerning the intention and mind of the superior, and whether he thinks it very necessary: for he knows best, and by his knowledge and his authority is the most competent judge. This rule hath no exception, unless it be evident that the punishment is imposed for terror, and to affright men from doing that for which it is not very fit they should be severely punished: as if a prince should under pain of death forbid the hunting of a hare; the greatness of the punishment neither makes nor declares the fact more criminal than it is in its own nature under a law that forbids it under a smaller punishment. But if the case be doubtful, whether the law be of great purposes and design, the greatness of the punishment in a prudent and temperate government is the best exterior indication. But if the punishment be light and trifling, the offence is so too; for the legislative power can put no more weight upon it than it declares by punishment, but so much it does: and the rule of Alfonsus a Castro[e] is very useful here and in some other articles, *Humana lex non magis gravat conscientias quam corpora.* For God's law adding energy and sanction to the constitutions of man, binds so far as the prince or as the prelate binds: and this is fully signified in the words and commission of Christ[f] to His church, "Whatsoever ye shall bind on earth shall be bound in heaven;" for there our blessed Lord constituting a government in His church, as already there was in the world, though of another nature, and by compulsories external, and a proper jurisdiction, (from which the spiritual differs, as I shall explicate in the fourth chapter of this book,) did promise to do to them as to the princes of the world; that is, verify their ministry of laws and judgments. He indeed appointed other manners of coercion, and a distinct administration; but the power of giving laws and judgments He gave them; and He gave it as firmly as to the greatest kings: that is, as He commands subjects to obey their princes, so also to obey their spiritual superiors; as He will punish the rebellious and disobedient to kings,

[c] [Greg. ix. decret., lib. i. tit. 2. cap. 2. col. 14.]

[d] Lib. ii. de baptis., cap. 6. [tom. ix. col. 101 C.]

[e] [vide de leg. penal., lib. i. cap. 5. col. 1559 sqq.]

[f] [John xx. 23.]

so the disobedient to bishops and to apostolical prelates; that is, according as every superior can and intends to bind by his temporal or spiritual penalty, God will verify it and condemn the same person with an eternal. Since therefore God's verification of human laws and judgments is after the sanction and for it wholly, it must also be according to it. He that binds what man binds, binds so much and no more; as therefore man intends the obligation, so God obliges the conscience.

§ 17. 2) If the matter of human laws be great in itself, to prevaricate those laws gives a proportion of greatness to the crime. *a*) But this seldom happens but when a divine law is complicated with the civil; such as the prohibition of public stews, the laws for keeping days of religion, the Lord's day, christmas, ascension, and the incarnation, the preserving the persons of them who minister to religion sacred, the immunity and intemeration of holy things as well as holy persons, the matters of sacrilege, simony, keeping of vows, together with all specifications and human instances of divine commandments, as that children should not marry without their parents' consent, that marriages should not be consummate before they be published. *β*) To these also are to be added such laws which in their own nature contribute much to the public security or advantage: as that men should not in a city fire their own houses, nor cut the dam of the sea upon their own ground, that they should not in times of peace fire a beacon, nor tell false and disheartening news to an army ready to join battle, nor make false musters when the enemy is near.

§ 18. 3) Though the matter of the laws be in itself light and trifling, yet

a) If by reason of some present appendages, and visible or probable consequences it be great, the conscience is tied to obedience under a great crime. For a single soldier to fly from a battle is of itself no great matter, were it not for the evil example; but because it may affright the next man, and that may scare the rank, and the rank may disorder the company, and so proceed to an intolerable mischief, therefore the sin is great by the proportion to the evil it is likely and apt to produce. To carry corn abroad is no great matter of itself; but when the price is great and the plenty is little, the mischief it does by accident is the measure of the sin.

β) Of the same consideration it is, when an action of itself light and impertinent is made the matter of a great scandal. To kneel or to stand at the holy communion hath been severally used in divers churches ancient and modern; but when a law is made that we shall kneel, and if I do not kneel he that observes will think I do no reverence to Christ's body and blood, and by my example will learn to despise it, the conscience is burdened with the sin of irreverence something, but very greatly with the sin of scandal.

γ) When the thing of itself is indifferent, and yet the custom of it is passed into superstition, or causes horror, or some notorious

evil effect, the laws that prohibit any such thing do bind the conscience to obey under the pain of being guilty of the great evil that is introduced by it. To light up candles by dead bodies[g] is as harmless as any thing; but if it be prohibited for the avoiding of superstition to which it ministers in some weak persons, the disobedience hath its value not according to the action, but the evil intention to which it is supposed to contribute. Thus we find a title in the canon law, *De cadaveribus non exenterandis et in frusta concidendis, ut ad alia loca transferantur:* and it is forbidden under the pain of the greater excommunication[h], 'that bodies should be embalmed,' that is, 'unbowelled and cut in pieces to be carried to other places of sepulture remote from where they died.' The thing in itself was innocent, and warranted by the practice of whole nations, and had countenance from the examples of Jacob and Joseph; but it did light into the observation of people that thought it cruel, unnatural, and inhuman, and there that opinion, not the nature of the action, gave the weight and value to the disobedience.

δ) When an action in itself indifferent is by the law expounded to signify a sin, though in itself it do not, nor in the heart of him that does it, the disobedience to that law is an act of that sin, or at least of a scandal relative to it. Thus if a civil law were made to forbid women to go in men's clothes, as presuming them that did so were incontinent and wanton, she that disobeyed that law was really to be judged wanton, because she would do that which the law so expounded; and her crime was great, not according to the thing itself, but to the sense of the law; she despises her own reputation, does that thing which the law, by which the best judgments are made, judges to be incontinence, and therefore she is justly to be condemned as an incontinent: and upon this account there was a law made; and it is recited, *Cap.* '*Si qua mulier,*' *dist.* 30[i], where women under pain of anathema are forbidden to appear in a man's habit; where the gloss adds, *scil. ob malum finem,* 'if it be for an evil end,' it is a sin proportionate to that evil end: and therefore when the law declares beforehand that it shall be judged to be a ministry to that evil end, the action is that sin which is so adjudged, and the conscience bound accordingly. But this caution hath one limitation, viz., though the law expounds such an action to be incontinence, and therefore ordinarily it is so to be judged; yet if it really be not so, but be done upon some great necessity or for some very good end, though till the publication and approbation of the cause it be externally and legally dishonest, yet the conscience is clear: because in an action that is indifferent, and condemned only for a presumptive end, when that presumption fails in the particular, and the indifferent action serves really to a pious, a charitable, or a

[g] [See vol. ix. p. 699.]

[h] De sepultur. [Extrav. comm., lib. iii. cap. 1. col. 254.] cap. 'Corripiantur.' ch. 24. q. 3. cap. 17. gl. ad verbum 'Major.' col. 1552.]

[i] [Gratian. decret., part. 1. dist. xxx. cap. 6. col. 157.]

necessary end, the action is made good, and therefore the conscience is disobliged. For that which is really so prevails over that which is but presumed so. Thus we find that S. Euphrosyna lived long in a monastery of men; and the church which took cognizance of it, did, upon evidence of her piety and purity, after death declare her a saint: and that S. Eugenia went in a man's habit (to avoid the persecutors of christianity for a while) is told in the *Menologion* of the Greeks; and her memory as a virgin and martyr is celebrated in the Greek church upon christmas eve. And when Nonnus the bishop of Edessa had converted S. Pelagia, who from a common courtezan became a glorious saint, after the suffering of most severe penances in the mount Olivet, she estranged herself from all probabilities of temptation from vain men by living in a man's habit concealed all her life time; and the church keeps her memorial in honour upon the eighth of October.

ϵ) If the matter of human laws be in itself trifling and inconsiderable, yet if it meets with a people where it is esteemed a crime, and the laws forbid it upon that account of a public disestimation, it is to be presumed that the laws do condemn it equally to the public fame; and therefore that the conscience is bound accordingly. Thus in the days of Clemens Alexandrinus[j] the Christians thought it a very horrid thing to wear false hair; and

Calvo turpius est nihil comato,

said Martial[k] to Marinus, nothing is more deformed, nothing more unhandsome. Now though it be not so in itself, yet when the hearts of men are generally against it, as it was then (though it be not so now) if any law had prohibited the wearing of perukes, the conscience had been greatly obliged; for the law did lay much upon it, even as much as all the evil of the public infamy did amount to. Thus to break a fasting-day which by custom hath been observed in a church, is a matter of small account; but if a law have forbidden it, and forbids it there where it is commonly accounted a very high impiety, though of itself it be not so, yet under such a law in such circumstances it becomes so, and is to be valued accordingly. And upon this account are those words of S. Chrysostom to be understood, *Adveniente tempore jejunii, etiamsi quis millies urgeat, et infinita cruciet, et cogat vinum delibare, aut aliquid aliud quod jejunii lege non est licitum gustare, patiendum potius esse, quam prohibitum tangere nutrimentum.* It was accounted a great matter then to break an ecclesiastical fast: and therefore when a law is supported by such an estimate, that law binds heavily; and it will be a great sin to break it, unless there be a great cause to legitimate or excuse it. In such cases we must endure a great inconvenience rather than disobey.

ζ) Though the matter be little, yet if the legislative power hath a particular eye and value upon it, however it be expressed, if such a

[j] [Pædag., lib. iii. cap. 11. p. 291.] [k] [lib. x. epigr. 83.]

value be known or observed, the smallness of the matter is no argument of the smallness of the sin. Thus also in the foregoing instance of ecclesiastical fasts are those words of S. Basil to be understood, saying, *Non minus crimen esse violare jejunium ecclesiasticum, quam militi abjicere scutum in bello, aut stationem deserere.* Ecclesiastical fasts in his time were the cognizance of a Christian, his defence and guard; and therefore 'not to keep them was as if a soldier did throw away his shield in a day of battle, or desert his station.' So the prelates of the church did then understand it, so they intended it. When a trifle is made a mark of union, as to wear a branch in war, when the superior sets his heart upon it, in this case the mind of the supreme becomes a law to his subjects, in the former they become a law unto themselves. Sometimes a small instance is made the trial of obedience; and the superior hath a great authority, but a little diocese, or a few subjects, or small occasions to rule in; in these and the like cases the smallness of the matter is not only to be considered, but the interpretation and effort which the superior puts upon it. If he calls every such disobedience a contempt of his authority, and accounts it a dissolution of that community where he governs, or a great violence of order; it is so in conscience, that is, to be valued beyond the matter. For he that takes a little piece of iron from an iron forge does no great harm; but if he takes it from a lock or a chain, he disorders the whole contexture.

§ 19. 4) When an ecclesiastical punishment is superadded to a civil law, or a civil punishment to an ecclesiastical law, it is to be presumed that the lawgiver puts much upon it, and therefore the conscience is obliged to obedience under a great sin. The reason is plain, because he can by no means better and more earnestly signify his purpose of obliging strongly than by using both the swords: he binds more strongly than all the terror of the civil punishment, who besides that calls in the aids of religion; and that prelate is passionately desirous to secure obedience to his laws, when besides the bands of God, he calls in to his help the cords of a man, and so secures it by all means. And therefore whatsoever is decreed under pain of solemn excommunication is therefore ordinarily presumed to be of great band unto the conscience: not only by force of the first rule[1], because it is a great punishment; but also because the civil power does verify that sentence, and inflicts some great temporal evil upon them that abide in contempt or disobedience to the orders and censures of the church.

§ 20. 5) The preceptive or prohibitive words in human laws ordinarily are no sign of a greater obligation of the conscience; that is, when the words of strict command are the usual style of the court, as it is both in civil and ecclesiastic courts. *a*) But if some laws are published with severe clauses of command, and others on purpose and by design with lesser and the more gentle, then the case is

[1] [§ 16. p. 11.]

evident that there is a difference to be made also by the conscience. And this is in particular made use of by the Franciscans in the observation of the rule of their order. For, *in Clementina*, '*Exivi de paradiso*,' § '*Cum autem*,' *De verborum significatione*[m], it is determined that that part of the rule of S. Francis which is established by preceptive or prohibitive words shall oblige the friars minors under a great sin, the rest not; and this only upon the account of the different clauses of sanction and establishment. β) Another exception there is to this rule, for when the preceptive or prohibitive clauses are reduplicated directly or by some solemn appendage, it is presumed that the conscience is highly bound. Such as are 'we strictly charge and command,' 'we command in the virtue of obedience,' 'upon your duty and allegiance,' 'upon my blessing,' 'as you will answer it at the dreadful day of judgment,' 'upon your oath,' and such like. And here the reason is plain, because the superior calls in to his aid the interest of some other virtue besides the obedience; as justice or veracity, hope or fear, the helps of God immediately, or a proper appeal to some other great tie of conscience.

§ 21. 6) However the laws were established, yet according as they go off, or go less, or fall into desuetude or disobligation, so the band of conscience grows less, till it be quite eased by abrogation; for the law binding by its establishment, and the conscience being bound by the life of the law, as the law dies the conscience is at ease: and by this rule S. Paul largely proves the christian churches not to be obliged in conscience to observe the law of Moses, in the seventh chapter to the Romans.

§ 22. 7) The contempt of any law, be the matter never so trifling, be the lawgiver never so unconcerned, be the public interest never so little, yet if it be a law, and still in force, is a great sin, and lays a great load upon the conscience. *Contemptus in omni specie mandatorum pari pondere gravis, et communiter damnabilis*, saith S. Bernard[n], 'all contempt of laws, be the matter little or great, is highly damnable;' and the reason he subjoins a while after[o], *Convertit in crimen gravis rebellionis nævum satis levem simplicis transgressionis*, 'contempt makes the smallest transgression become a great rebellion.' Because here it is not the violation of the law, but of the authority; not the decree, but the power is undervalued, and ever accuses the lawgiver of want of wisdom, or supposes him to have no power. This is that which in Leviticus[p] is expressed by *Si spreveritis mandata mea, et anima vestra fastidierit judicia mea*, a 'contemning the commandment, and that your soul hate and loathe the judgments.' Such a thing as this is a deletery to the whole law, and tears the knot that ties the mantle[q] on the prince's shoulders: and this is

[m] [Clement., lib. v. tit. 11. cap. 1. col. 294.]
[n] De præcept. et dispens., cap. 12. [col. 928 I.]
[o] Cap. 14. [col. 931 L.]
[p] [Lev. xxvi. 15.]
[q] [Compare vol. viii. p. 353.]

acknowledged even by them who believe that human laws do not oblige the conscience; for they confess that the conscience is at least bound so far that the law be not despised. Now then, besides that this rule is established not only by its own reason but by concession, there is this advantage to be made of it; that if the conscience be bound so far that the law be not despised, then the conscience is bound so far that the law be obeyed if it can; that is, that it be always obeyed, unless there be a competent and sufficient or probable reason to the contrary. And therefore it is remarkable that God calls the not obeying of His laws a despising and loathing them in their hearts: *Si judicia mea exhorruerit anima vestra, ita ut non faciatis*[r], 'if your soul so hate My judgments that ye do them not:' and so it is in human laws; he that breaks them without cause despises them, for nothing else does make him not to obey. For this is a certain rule, 'causelessly and contemptuously are all one[s].' If therefore the adversaries in this rule do affirm that the conscience is bound to obey, unless there be reason to the contrary, then we agree together, and both with truth; and if there be any difference afterwards, it is only in assigning what reasons and what causes are sufficient. But if they mean that the conscience is only bound not to despise the law, but may break the law when there is no reason for it, and if she does, commits no sin against God; then by despising the law they must mean something that no grammar and no lexicon ever understood, and that none despises the law but he that rails upon it, and reviles it, or reproaches the authority directly; for indirectly he reproaches the authority that despises the law, and he directly despises that for no reason disobeys it: for if for no reason, then it is contempt, for else there can be no account given of the omission; and nothing is a greater contempt than to esteem the law so inconsiderable as to be less than nothing. He that thinks it unlawful hath a reason, real or imaginary; but he that thinks it lawful, and yet will not obey, and hath no reason why he will not, does despise it infinitely. Some suppose that to break a law frequently or customarily is contempt: but to this I assent not, because there may be a lasting reason why the law is by custom broken: indeed, if there be no reason, then the greater the custom is the greater is the contempt; but if there be a reason, neither one omission nor twenty can be criminal. But in this particular I like well what is said by the lawyers, *Ex consuetudine indici præsumptionem contemptus, licet ipsa contemptus non sit*[t]. It is a very great presumption that whoever frequently breaks the law does despise it; and upon him that does so, the burden of proving that he does not, by proving his reason, is incumbent.

[r] [Lev. xxvi. 15.]

[s] Gloss. in cap. 'Metropolitanum,' [decret. caus.] ii. quæst. 7. [cap. 45. col. 765.]

[t] [Navar. in cap. 'Tres sunt,' de pœn., apud Suarez, de leg., lib. iii. cap. 28. p. 181.]

§ 23. These are the measures by which we shall account concerning the degrees of obligation of conscience to obey human laws. The use of them is this, that besides they are helps to alleviate the scruples or the doubts of conscience concerning the greatness of a sin in this instance, and in proportioning our repentance and amends; they are also of great use both in the judging concerning the reasons of disobeying, that is, whether the reason be weighty enough to outweigh the impress and intention of the law; and also of judging what inconvenience is to be suffered to preserve our obedience respectively to any law.

§ 24. It now remains that for the confirmation of the truth and explication of the sense of this rule, the objections made be considered.

§ 25. To the first I answer, that to suppose human laws to bind the conscience is so far from devesting God of His royalty, that it does very much establish it; for it is a part of His royalty to bind the conscience, and therefore he that says that God does bind the conscience to obey human laws makes no intrenchment upon that. For although human laws do bind the conscience, yet it is not by virtue or formal energy of the civil power, but by the authority and power of God; the king and the bishop are but Christ's deputies, and His power they exercise, by His power they rule, and to His kingdom they minister. And therefore the civil power does not take cognizance of the conscience, nor pretend a compulsory over it; but God does, and does exercise it when He punishes the soul eternally for contempt and rebellion against the princes of the people.

§ 26. To the second, we are to consider, that when it is said that human laws bind the conscience, the meaning is, it ties us to duty, and we are guilty before God if we do not obey man: and conscience is not here taken in the physical or natural sense, for a practical understanding alone, but for the whole mind of man informed and commanded by God; in which mind one of the principles or laws of God written there is, that we should 'obey them that have the rule over us[u]:' but besides this, this whole argument is a plain paralogism; for it supposes that because human laws are tied upon the conscience, that they are tied by man, not by God; which is against the true state of the question: therefore if conscience were wholly a habit or an act, or the faculty of understanding, and consequently in this last case subject to God alone who is truth, yet the truth remains unharmed, for it is not man that rules in the conscience, but God who commands it to obey man, for fear of God's displeasure. Human laws are but the material part in this obligation; the authority and command of God give it life and force upon the conscience: it is like the body prepared by the

[u] [Hebr. xiii. 17.]

father of the country, into which God inspires a living and an operative principle.

§ 27. To the third the answer is easy and short: for granting all that is said, it not being material to the present enquiry whether it be true or no; it is a part of christian liberty that the conscience be servant to none but Christ, and whatever be the matter of human laws, if it be not also the matter of a divine law, the conscience is free from that matter of itself, because God being only the Lord of conscience, and He not having by His law established that matter, the conscience is free as to that matter; but then when a just authority supervening hath made a law in that matter, though the conscience was free from that matter, yet it is not free from that authority: not that the conscience is a subject of that authority immediately and ultimately, but because God hath subjected it, and commanded it to obey.

OF CHRISTIAN LIBERTY.

§ 28. But for the fuller satisfaction of conscience in this great article, it will not be amiss to give a full but short account of the nature and pretences of christian liberty. In order to which S. Peter[v] explicates this article most excellently, saying, 'Be subject to every ordinance of man' διὰ τὸν Κύριον, 'for the Lord,' that is, for His commandment, and for the interest of His kingdom, and His power, and His glory: for it is a portion of His kingdom[x], it is the deputation of His power; and He is glorified by our obedience, when the princes of the world, by seeing our ready subjection, have no cause to speak evil of us; which was the very argument which the apostle uses in this question. And therefore S. Peter, who in this enquiry takes notice of our liberty, gives express caution, that though we be free from many fetters and hard services, yet we should not pretend christian liberty as a cover for sedition, and rebellion, and disobedience, which he signally calls κακία[y]: we render it 'maliciousness:' and if it be used to express the effects and evil consequents, it is very well; but it relating here to the principle of the mischief, it is better rendered 'craftiness[z],' μὴ ἐπικάλυμμα ἔχοντες τῆς κακίας ἐλευθερίαν, 'not making this christian liberty a pretence and cover for your craftiness:' for they well knew the artifices of the devil, and that he would endeavour to alien the hearts of subjects from their princes upon pretence of christian liberty, and of heathen princes from christianity upon supposition it was no friend to government; and so it fell out in the Gnostics and Valentinians: but against these evils the apostles by the Spirit of God and the doctrine of the gospel made excellent provisions. For as S. Peter so also S. Paul

[v] [1 Pet. ii. 13.]

[x] [Isa. xxxiii. 22; Luke i. 74; Apoc. i. 5, 6; and chap. xix. 16.]

[y] [ver. 16.]

[z] See the 'Doct. and Pract. of Repent.,' chap. 4. [vol. vii. p. 126.]

used the same caution in this article: for having pressed upon the Galatians to insist upon their christian liberty, and not to be brought under the yoke of Moses, lest they should stumble at the name of liberty, he charges them not to abuse it, not to extend it beyond its proper limit, not to use it as an occasion to the flesh; and that it may be manifest where it was he intended to fix his rule, he instances in the matter of government, adding by way of explication, 'by love serve one another[a]:' that is, though you Christians be all free, yet there is a bond of charity, by which you are tied to the rules of government and service and subordination; in these things if you pretend your liberty, it will be but an occasion to the flesh, and a dishonour to the Spirit. For our liberty is not a carnal liberty, but it is a spiritual[b]. If a slave be called to christianity, he is the Lord's freed-man, but not man's, he is still a servant and commanded to abide in it, if in that state he be called. And it is an excellent rule which is given by Calvin[c] in this particular, 'We ought to account that by christian liberty there is nothing gotten to us before men, but only before God.' And it is a horrible folly which abuses some men, they think that they lose their liberty unless they get possession of it by doing against that part which is forbidden: not considering that if the matter be indifferent, then they may as well do that which is by man commanded as do the contrary, they are as free to one as to the other; and therefore for civility, and for government, and for order, and for humanity sake, since they must use their liberty one way, let them do it that way which will at least please God as well, and man better. And for their christian liberty, that is in the spirit, and they need no other testimony but the conscience itself: for the conscience in this also is a thousand witnesses. And therefore truly and plainly the liberty that the apostles speak of is but a freedom from the 'dominion of sin,' and a freedom from the terrors and obligation of the law: the first is a freedom of duty, the second a freedom of privilege; the first is a commandment, the second a state of advantage; that is but a working, this is completed; that is designed by Christ, this already wrought, and is the effect of Christ's death, while the other is the product of His spirit, and the business of the kingdom of grace. But let us see what is the proper and explicit effect of all this.

1) It is true that we are freed from sin, that is, we are asserted into the liberty of grace and pardon; the band of sin is broken, and we may be rescued from the power and from the punishment of it: and what then? S. James[d] answers this enquiry, "Whoso looketh into the perfect law of liberty, must be a doer of the work," that is, of the righteousness evangelical; and "this man shall be blessed in his deed." For it is Christ who hath set us free; but yet be servants of Christ: His spirit hath made us free, and asserted us "into

[a] [Gal. v. 13.]
[b] [1 Cor. vii. 20—24.]
[c] Lib. iii. instit., cap. 19. § 10. [p. 222.]
[d] [James i. 25.]

the glorious liberty of the sons of God[e];" "therefore we are debtors, not to the flesh, to live after the flesh[f]," but we must live a spiritual life, for to do so is to persist in our liberty; it is entering upon that possession which God hath given us: but this is like the gift given to the sons of Israel; all the land of Canaan was their portion, but they were to fight for it, and win it by degrees; but it was long before they were in quiet possession, and so shall we when we are in the land of promise.

2) It is also true that we are freed from the curse of the law and the spirit of bondage or servile fear, which was produced by the curses threatened to every transgressor without the abatements of infirmity and the allowances of repentance; and we are adopted into a liberty of the sons of God, we can cry Abba, Father, and God will use us not with the severe rights of a Lord, but with the sweetest measures of a Father's government. And what then? what is the effect of this liberty? By the Spirit of God we cry Abba, Father, by Him we have this liberty, therefore we must live in the Spirit: for though we be not under fear, yet we are under love; we are not under the curse of the law, yet we are under the duty; not under the coercive power of the first covenant, yet under the directive power of the eternal commandment. For the Spirit of God makes us sons, yet none are 'sons but such as are 'led by the Spirit;' and we are freed from the curse and condemnation of the law, but not unless we 'walk not after the flesh, but after the Spirit[g].'

3) It is also true that we are freed from the ceremonial law, the law of circumcision, of meats and drinks and carnal ordinances. And what then? Use it charitably, and "take heed lest this liberty of yours become a stumbling-block to them that are weak[h]." Some there are that extend this to a liberty from all things that are indifferent, as meats and garments, and days, and ceremonies, and the like. Now if they mean that they are not bound to these things by any law of God under the gospel, it is very true; that is, Christ gave us no commandment concerning them; but if it be meant that these things are left so free that there can be no accidental and temporal obligation, rule, or limit made concerning them, this is that I am now disputing against. But that this is no part of christian liberty purchased by the blood of Christ, is evident, because things in their nature indifferent, that is, concerning which there was no commandment given, were always free, and to say otherwise were a contradiction in the terms; and no drop of Christ's blood could so vainly fall as to purchase for us what was done already by the nature of the thing. He only rescinded the laws of Moses concerning the instances commanded there; that is, those which were not indifferent, as being positively commanded, He returned to their own nature, to be used in another dispensation, to be disposed of in another govern-

[e] [Rom. viii. 21.] [f] [ver. 12.]
[g] [Rom. viii. 1, 14.] [h] [1 Cor. viii. 9.]

ment, in a distinct manner, to other purposes, or (as occasion should serve) to be wholly let alone. But although Christ broke the yoke of Moses, and so left the instances and matters there used to their own indifference; yet He left it as indifferent to the lawgivers to make laws concerning them; for He gave no commandment that they should always be left indifferent as to external usages. Under Moses they were tied upon the conscience by God himself, and therefore unchangeably during that whole period; but now they are left to a temporary transient use and ministry, to do good, or to promote order, or to combine government: and if governors had not a freedom to use them in government, as well as private persons to use them if they would in their own persons, christian liberty had been made for subjects, and denied to christian princes and christian priests.

4) There is yet another liberty called 'the liberty of glory,' or the glorious liberty of the children of God: that is, the 'redemption of our bodies[i]' from disease and pain, from death and corruption: but for this we must stay till the last adoption; for what Christ is by generation and proper inheritance, that we shall be by adoption if we belong to Him. Now of Christ in His resurrection it was said, 'Thou art My Son, this day have I begotten Thee[k].' That was the last generation or right of sonship, to which when we are adopted we shall be partakers of the glory; but that was at Christ's resurrection, and this shall be in ours.

5) Now here being in the days of the apostles so much talk of liberty, and that in so many instances, and (without question) made the subject of many sermons, and much table-talk, and many disputes, and used as an argument to persuade strangers, and to comfort the faithful, and the devil being so ready to make use of any prepared lust, or mistake, or ignorance, or fancy; it could not be but many weak and many false persons did instantly dream of a temporal liberty, that sons were free from the laws of parents, wives of husbands, servants of masters, subjects of princes: the apostles knowing how great a confusion this would be to all relations and states of men, and what an infinite reproach it would be to the religion, stopped this avenue of mischief, and not only dogmatically described the duties of all inferiors, but took care also to do it in those places where they had occasion to speak of christian liberty, that there might be no pretence to do evil. For christianity neither could nor ought to have been received if the preachers of it had destroyed governments. The effect of this discourse is plainly this, that christian liberty does not warrant disobedience to human laws, or liberty from their obligation. Whereas therefore the apostle says[l], "Ye are bought with a price, be not ye the servants of men;" it is not to be understood of the conscience or mind of men, as the objection affirms, but only is an advice of prudence, to the purpose of

[i] [Rom. viii. 21, 3.] [k] [Acts xiii. 33.] [l] [1 Cor. vii. 23.]

the preceding words in the twenty-first verse, "If thou mayest be made free, use it rather:" that is, since it is more convenient for the advantages of religion, and the service of Christ, by the price of whose blood you are redeemed, that ye may serve Him all your days, therefore you who are free, be not easy to give or part with your liberty, but use your state of liberty for the advantage of the service of Christ; for that nothing else is meant, appears in the words he immediately subjoins, "Brethren, let every man wherein he is called, therein abide with God[m]:" that is, your being the servants of men is not inconsistent with your service of God, nor that servitude incompossible with christian liberty. But yet suppose that the interpretation used in the objection be right, and that, "Be not ye the servants of men," is to be understood of the conscience or mind of man; yet, save only that it was not so intended by the apostle, it can do no harm to this question: for the understanding and the mind may be free, when the hands are tied, and a man may have the liberty of opining and judging when he may not have the liberty of acting, which is all is pretended to by the empire of human laws. For as Origen excellently, 'This is nothing but an intellectual liberty, concerning which let a man contend in an intellectual and evangelical manner,' that is, by good arguments and the spirit of meekness, and there is no harm done. This is the whole sum of the doctrine of christian liberty. Concerning which if any man desire to read more words, and longer discourses, and some intrigues, he may please to see them in Driedo, who hath written three books, and Belliolanus, who hath written twenty books 'Of christian liberty[n].'

§ 29. To the fourth I have already answered both in the beginning and end of the answer to the former, and it proves nothing but what is granted. For to use the same instance, you may fast when you are commanded by your superior, but you must not think that fasting is a part of the divine service[o]. It is true it is no part of divine service, the fasting of itself is not, but the fasting in obedience is. For though man commands fasting now, or so, and God does not, yet God commands that we should obey those commands of men; and then the conscience is συνείδησις Θεοῦ, 'the conscience of God[p],' or toward God, it is His subject and servant, and his liegeman: and yet at the same time the law of man pretends not to rule the conscience immediately, and therefore the conscience is free, and may judge the thing of itself to be no divine commandment; but the will is not free, and the duty is bound upon that,

[m] [ver. 24.]

[n] Vide etiam Francisci de Silvestris opusculum de evangelica libertate.

[o] If a man have but a right understanding that it is all one before God to eat flesh or eggs, milk or fish; that to Him it matters not whether you wear a red or a white garment in your times of solemn prayer; this is enough, says Calvin, (lib. iii. cap. 19. § 10. instit. [p. 222.]); he need not tie himself to either, but if he does, his conscience is still free, though his action or choice be determined. And so it is though the law of his superior determines him.

[p] [1 Pet. ii. 19.]

when the understanding is at liberty. *Errat enim si quis putat servitutem in totum hominem descendere, pars enim melior ejus excepta est; corpora obnoxia sunt, et adscripta dominis, mens sui juris est,* said Seneca[q], and from him Aquinas[r]. The whole man is not in subjection; the body indeed is under lords and laws, but the mind is free as air.

§ 30. To the fifth I answer by denying the consequence of the argument. For though human laws do bind the conscience, yet it follows not that it is put into the power of man to save or damn his brother; because human laws bind the conscience, but not by force of human authority precisely, or in itself, but by virtue of the divine commandment: and therefore a prince cannot make a law and threaten damnation to the breakers of it, because he cannot inflict it; but he may say, that he that breaks it will sin against God, and God will inflict damnation upon the rebellious and disobedient. But then whereas it is objected that this makes the broad way to hell broader, it is a mere scarecrow; for God only can enlarge or straighten this way efficiently and formally; but *objective et occasionaliter*, by way of instance and occasion, by giving new laws to endear obedience in new instances when it is for the public good, hath in it no inconvenience: every minister of the word and sacraments, by every invitation of his people to a more strict religion, does make the damnation of the disobedient greater, and by every check of conscience and by every opinion of our own we become a law unto ourselves, and make the way of our conversation narrower; and every offer of grace and every call of the Spirit does add moments to the eternal misery of them that do resist; and yet it were not well to be without them, for fear of that accidental evil. For it is to be considered that these aids and all good laws are intended for good to us, and will bring good to us if we obey; but the very reward itself being offered, makes also our punishment just and reasonable if we refuse. *Ex te tua perditio.* The law is not in fault, but the rebellious man ruins himself, who by occasion of the law might have received an increase of glory if he had pleased.

§ 31. To the sixth the answer is given in the premises: human authority does not make the action of disobedience to be a sin. It makes that the not compliance of the subject is disobedience, but it is the authority of God who makes disobedience to be a sin: and though no human power can give or take grace away, yet we may remember that we ourselves throw away God's grace, or abuse it, or neglect it, when we will not make use of it to the purposes of humility, charity and obedience, all which are concerned in our subordination to the laws.

§ 32. The seventh objection hath two parts; the one concerns the civil power, the other the power ecclesiastical. Concerning the

[q] De benefic., lib. iii. [cap. xx. tom. i. p. 674.]

[r] 2. 2^ae. q. 104. art. 5. [tom. xi. fol. 260 a.]

civil, it is affirmed to be unreasonable that the power which cannot remit sins should bind to sin; and therefore the civil power cannot bind the conscience, because it cannot remit the sin to which it binds. In which argument there are four terms, and therefore it is a perfect fallacy. For it is true, that it is reasonable that the power which binds should also loose: but that the civil power cannot loose in the same sense in which it can bind is false; for the civil power can untie that which it hath tied, unless by tying be meant tying to one thing, and loosing be meant of another. The civil power binds to obey; the same power can untie this band, by dispensing with the person or abrogating the law. But when it is said, the civil power cannot remit the sin, therefore not bind to sin, it is a sophism, because binding and loosing do not signify in the same manner. For it does but accidentally bind to sin, and in the same manner it does also ease the conscience: it makes the law to which God binds the conscience; it takes off the law, and from the conscience God takes off the obligation. But because it does not by itself bind the conscience, but occasions the conscience to be bound by God, therefore it hath nothing to do to remit the sin, for that must be the act of God; but the law can loose what it bound, and where it bound, and as it bound, that is, not the sin, but the subject matter, the instance and the occasion. But now concerning the ecclesiastical power, the objection says that it hath no power to make laws, but such as are in the matter already decreed by God; and therefore it does not bind but what God hath bound already, and consequently hath of itself no power to bind the conscience. To this I answer, α) that it is true, neither the ecclesiastical nor the civil power does by its innate authority oblige the conscience, but both powers can make laws to the observation of which God doth oblige conscience. β) It is an error to say that the ecclesiastic power cannot make laws in things not decreed by God: for the supreme civil power is also ecclesiastical if it be christian, and hath a power in the external regiment of the church, and therefore to make laws in such parts and accidents of government in which God hath left no special direction: and for the proper power of the ecclesiastics, that also extends beyond the giving commandments in matters of express duty commanded by God, as I shall make appear in its own place. γ) If it were granted that the church could not make laws in things not decreed by God, yet when God hath decreed the thing, the church can make laws concerning the order of the things, the measure and the manner, the number and the weight, the adjuncts and the circumstances; and that's a field large enough for her to make laws to oblige the conscience. And therefore although it were ridiculous and contemptible, injurious and uncharitable for the church to pass her greatest censures upon persons that transgress *bono animo*, or through unavoidable infirmity, in small inconsiderable instances, circumstances and unconcerning forms of law and unconsidered cere-

monies; yet the smallest thing may be placed so as to be of great concernment: and when these things accidentally become great, the censures of the church may be prudently and charitably inflicted. But what power the church hath in making laws will afterwards be considered in its place; thus much was of present necessity for the answer of the objection.

§ 33. To the last there might be many answers given. α) It may suffice that the argument is expressly false; for supposing that human laws do directly bind the conscience, it does not follow that it is as great a sin to break the laws of man as to violate the laws of God; that it is a sin it does follow, but not that it is so great. For the law of God against idle words does oblige the conscience, but it does not therefore follow that it is as great a sin to talk idly as to kill a man. But this sophism relies upon this false supposition, that all things that bind the conscience do bind in the same degree, to the same measures of iniquity. For if they do not, then human laws may bind the conscience, and yet they may be broken at an easier rate than the commandments of God. β) But then I add, that this is according to the subject matter, and the evil consequent of the action. For suppose a prince oppressed by a rebel party, as Pompey was by Cæsar; Photinus, that told the king of Egypt where he lay hid, did a greater fault than if he had railed upon Pompey, expressly against the commandment, 'thou shalt not speak evil of the ruler of the people[s].' To open the secrets of a king may be a greater sin, and do more mischief, and proceed from greater malice than to call my brother fool. For a soldier to desert his station may be a greater crime than to steal a shilling. And yet it cannot be denied, but that there is great difference between the laws of God and the laws of man in their obligation. Concerning which, in order to many cases of conscience, it is fit that I give account.

THE DIFFERENCE OF DIVINE AND HUMAN LAWS IN THEIR OBLIGATION.

§ 34. 1) The law of God binds the conscience immediately, and by the right of God; the law of man binds the conscience mediately, and by the interposition of the divine authority: so that we must obey man for God's sake, and God for His own.

§ 35. 2) The laws of God bind the will and the understanding; that is, we are bound to obey, and bound to think them good. But human laws meddle not with the understanding; for that's a prince, and can be governed as he can be persuaded, but subject to the empire of none but God: but the will is the subject of human laws; not only that the will be bound to command the inferior faculties and members to obey and do the work of the law, but of itself precisely it is bound: for it is not enough that we do the outward

[s] [Exod. xxii. 28; Acts xxiii. 5.]

works, but the will must be of itself obedient. 'Whatsoever ye do, do it heartily;' ἐκ ψυχῆς ἐργάζεσθε, 'do it from your very soul[t];' that is, cheerfully, willingly, without murmuring: ὡς τῷ Κυρίῳ, καὶ οὐκ ἀνθρώποις, 'for ye do it not to men, but to the Lord.'

§ 36. 3) The divine laws are lasting and perpetual, but human laws cease to bind the conscience, by desuetude, by contraition, by contrary reason, by intolerable inconvenience, by dispensation, and lastly by abrogation.

§ 37. 4) Divine laws oblige the conscience not only to an active obedience, but to activity and earnestness to do them, to seek opportunities, to omit none to do them presently. Human laws oblige to an active obedience, but not to a spontaneous offer, and ultroneous seeking of opportunities. It may be a sin, it is always an infirmity, to seek for excuses and dispensations in divine laws; but it is lawful by all fair means to seek to be freed from the band of any human law that is not of public concernment, and is of private incommodity. A man may decline a burden of the law, or seek a privilege and exemption. The citizens of Rome were tied to keep guards in course, and do other duties; but he that had three children, had a right of exemption, and he that hath none may lawfully desire and petition for the privilege. The burden of a human law may be thrust upon another, if it be done by just and charitable means; but in the laws of God every man must bear his own burden choosingly and delightfully.

§ 38. 5) Human laws only consider the outward action, not the secret opinion; you must obey man, when at the same time without sin you may believe the law to be imprudent, or imperfect, or fit to be annulled. But in the laws of God we must submit our most secret thoughts, and we must be sure to obey human laws, as we keep for God the prerogative of His: but though to God we must give account of our thoughts, yet human laws meddle not with them at all. *Cogitationis pœnam nemo meretur*[u], saith the law, *ff. de pœnis.*

§ 39. 6) Human laws oblige only that they be not despised, that is, that they be not transgressed without a reasonable cause: but the laws of God must be obeyed in all cases; and there is no cause to break them, and there can be no necessity upon us to commit a sin. In the obedience to human laws we may suppose there was a weakness in the sanction; they could not foresee the evil that was future, the inconveniences upon some men, the impossibilities of many, the intolerable burden upon others: and therefore although a reason is always to be had when we do not obey, and that a good one; yet the reason and the goodness of it is not to be the greatest and the best, or to be exacted according to the strictest measures of necessity

[t] [Col. iii. 23.]

[u] ['meretur' is the reading in Suarez (de leg., lib. iii. cap. 13. p. 142), who was probably Taylor's authority, but 'patitur' is that of the Digests, lib. xlviii. tit. 19. § 18. col. 1733.]

alone. For though the laws of God bind to obedience without dispute, without diminution, without excuse, and in all necessities and accidents that can supervene; yet beyond that which is good, that which is equal and probable and profitable, human laws do not bind: but of this in the sequel.

§ 40. 7) He that despises the law of God dies for it, and he that neglects it is accounted to despise it; the not doing it is by interpretation a contempt of God's law. He that despises human laws is also guilty before God; but he only is accounted to despise it that voluntarily and without reason disobeys. But he that out of the multitude of other affairs, or an incuriousness of spirit, unknowingly or ignorantly neglects it by not thinking of it, is in most cases innocent before God; but is tied to submit to the punishment if he be required and deprehended. This only is to be added, that a great and a dissolute negligence even in human laws is so far from excusing the breach of the law, that it doubles the guilt: *Dissoluta negligentia prope dolum est,* saith the law, *ff. Mandati, l.* '*Si fidejussor*[x],' *et ff. de action. et obligat. l.* 1. §. '*Is quoque*[y].' A great negligence is accounted malice.

§ 41. 8) Ignorance of the laws of God excuses no man, because it is sufficiently revealed to every man; and he is not only bound to enquire much if there should be need, but there is also so clear a communication of them, that a little enquiry will serve the turn, and therefore no man is here excused by ignorance. But in the laws of man ignorance is easier pleaded, and does more excuse, and does unavoidably happen to many men in very many cases; and they are less bound to enquire, and a less matter makes the ignorance probable and quit from malice: of all which a prudent and a good man is to be the judge.

§ 42. 9) When divine and human laws are opposed, these must always yield to those; and without dispute God is to be obeyed rather than man; and although we must obey man for God, we must never obey man against God: and therefore it was excellently counselled by Ben-Sirach[z], "Let not the reverence of any man cause thee to sin."

§ 43. 10) As a consequent to the former, all the ministers of justice are bound to be more severe in exacting obedience to God's laws than to their own in an equal or like matter; they must be easy in the matter of their own laws, and zealous for God: and this also does prove that where the effect, and the appendages and circumstances do not alter it, it is in the whole a less sin to break a human law than to break a divine; that is, although both are sins, yet in the nature of the action it is of a less degree of crime to break the law of our superior than of a supreme, of man than of God.

§ 44. 11) Divine laws are imposed upon the people; but human

[x] [Digest., lib. xvii. tit. 1. l. 29. col. 469.]

[y] [Ibid., lib. xliv. tit. 7. l. 1. col. 1511.]

[z] [Ecclus. iv. 22.]

laws are imposed indeed, but commonly by their consent, explicit or implicit, formal or interpretative, and without acceptation in a sweet regiment may indeed but are not usually passed into the sanction and sacredness of laws[a]. For the civil government is not absolute, and mere and supreme; but in some senses, and to some purposes, and in some degrees, limited, conditional, precarious and mixed, full of need, and supported by them who are to be ruled, who therefore are to be regarded.

12) Some add this; the divine laws bind both in public and in private, the human in public only; that is, because human laws take no cognizance of what is secret, therefore neither do they of themselves bind in secret. But this although in speculation it hath some truth, yet when it is reduced to practice the consideration is different. For though man's laws know not what is in secret, and therefore cannot judge; yet God, that binds human laws upon our consciences, knows the most secret breach of laws, and He judges and discerns. But this hath some difficulties in it, and many very material considerations, and therefore is to be distinctly handled in some of the following pages[b]. This only for the present: when in private we can be excused or innocent before God, in that private and in those circumstances human laws oblige not; but God's laws equally oblige both in public and private, respectively to the subject matter. Of themselves human laws have nothing to do with private actions; that is, neither with the obligation nor the notice.

§ 45. There are many other material differences between the laws of God and man, as to their obligation upon conscience; which I shall afterwards explicate upon the occasion of particular rules. The great sum of all is this, so far as relates to conscience; the law of God binds stronger, and in more cases than human laws. A breach of a human law is not so great a sin, nor is it so often a sin, as a breach of the divine; the advantage both in the extension and the intension being (as there is all reason it should) on the part of God; that God who is in all may be above all.

§ 46. Thus they differ, but in order to the verification of the rule, it is to be remembered that in the main obligation of conscience they do agree. The divine law places things in the order of virtue and vice: and the sacraments are therefore good because they are appointed by Christ, our great lawgiver; and in the old law the eating of swine's flesh was therefore evil because it was forbidden by the law of God. For all the goodness of man's will consists in a conformity to the will of God, which is the great rule and measure of human actions. And just so it is in human laws according to their proportion and degree: when the law of the church commands fasting, to do so then is an act of temperance as well as of obedience, and to disobey is gluttony; and to wear cloth of gold is luxury when the law commands us to wear plain broad-cloth. To give great gifts at

[a] Vide rule vi. of this chapter. [b] Rule iv. of this chapter.

marriages and feasts may be magnificence; but if the law limits to a certain sum, to go beyond is pride and prodigality. This is the work of God, though by the hands of Moses and Aaron: for it matters not by what means He effects His own purposes; by Himself or by His power administered by second causes. The sum is this, which I represent in the word of S. Gregory Nazianzen[c], *Submittamus nos tum Deo, tum aliis, tum iis qui imperium in terra gerunt: Deo quidem omnibus de causis; alii autem aliis propter charitatis fœdus, principibus denique propter ordinem, publicæque disciplinæ rationem:* 'let us submit ourselves to God, to one another, and to princes: to God for all the reason in the world; to one another for charity's sake; to princes for order's sake, and the account of public government.' But if we refuse to obey men, God will punish us; and if we refuse to obey God, even the prince ought to punish us; and both promote the interests of the same kingdom. Κολάζεσθαι δὲ τοὺς μὴ ἀκολούθως τοῖς διδάγμασιν αὐτοῦ βιοῦντας, λεγομένους δὲ μόνον χριστιανοὺς, καὶ ὑφ' ὑμῶν ἀξιοῦμεν, saith Justin Martyr[d], 'we pray you, O kings and princes, to punish them who are Christians only in name, and do not live according to the decrees of our great Master:' and then for their own interest this is his account, Θεὸν μὲν μόνον προσκυνοῦμεν, ὑμῖν δὲ πρὸς τὰ ἄλλα χαίροντες ὑπηρετοῦμεν, βασιλεῖς καὶ ἄρχοντας ἀνθρώπων ὁμολογοῦντες· 'we worship God alone, but in other things we gladly serve and obey you, confessing you to be the kings and princes of the people. I conclude this in the words of S. Bernard[e], *Sive Deus, sive homo vicarium mandatum quodcunque tradiderit, pari profecto obsequendum est cura, pari reverentia deferendum,* 'a law, whether given by God or by man, is to be observed by a like care and a like reverence;' alike in the kind, but not in the degree[f].

RULE II.

HUMAN LAWS DO NOT OBLIGE THE CONSCIENCE TO AN ACTIVE OBEDIENCE, WHEN THERE IS AN IMMINENT DANGER OF DEATH, OR AN INTOLERABLE OR VERY GRIEVOUS EVIL IN THE OBEDIENCE.

§ 1. THIS rule is to be understood to be true regularly and ordinarily, and in laws purely human; that is, such which are not com-

[c] Orat. xvii. [§ 6. tom. i. p. 321 C.]

[d] Apolog. ii. [al. i.] pro Christ. [§ 16. p. 54 A.]

[e] De præcept. et dispens., cap. 12. [col. 928 L.]

[f] Videat lector Latomi librum de ecclesia et legis humanæ obligatione, et Claudium Carninum, de vi et potestate legum humanarum; Cajetanum verb. 'Præceptum,' Navarrum, Card. Toletum de hac materia in libello de 7 peccatis mortal.

mentaries or defensatives of a natural and a divine law. For if the forbidden action have in it any thing that is intrinsically evil, then the action must not be done, though to save our lives: for no sin ought to be the price of our life, and we ought not to exchange an eternal life for a temporal. Here our blessed Saviour's words are plain, "Fear not them which can kill the body;" and "what profit have you, if you gain the whole world and lose your own soul?" and "it is better to go into life maimed and blind, than having two feet or two eyes to go into hell fire;" and "God is to be obeyed rather than man;" and "he that would save his life shall lose it;" and divers others to the same purpose. Now when any thing of this nature is the subject matter of a human law directly, or if the violation of any thing of a divine commandment be the consequent of the breach of a human law, then the human law binds to its observation though with the loss of our lives.

§ 2. But the question here is concerning mere human laws established in an indifferent matter; and in this it is that the rule affirms that human laws do not bind to their observation with the danger of life. The reasons are these,

3. 1) Because the end of such laws is only the good and convenience of the lives of the citizens. *Omnibus a natura bene informatis insitum esse ut nemini parere velint, nisi utilitatis causa et legitime imperanti,* said Cicero[g], 'nature herself teaches all wise men to obey princes that govern by laws, and for the good of their subjects.' They therefore being wholly made to minister to the circumstances of life, must not by our lives be ministered unto; nothing being more unnatural and unreasonable than that a man should be tied to part with his life for his convenience only. It is not worth it, it is like burning a man's house to roast his eggs.

§ 4. 2) "Eye for eye, and tooth for tooth[h]," and "all that a man hath he will give for his life[i]:" it is indeed the voice of nature and of this world, there is no capacity to receive any good when our life is gone; and therefore nothing of this world can make a man recompence for his life. That law therefore that pretends to do advantages to our life, if it shall also require our life for the securing such advantages, takes away more good than it pretends to give, and makes the substance less principal than the accessary.

§ 5. 3) If human laws do admit of equity (as it is confessed by all men) there is no case so favourable as that of saving of our life: either then we are to suppose the laws to be made of a rock, and to yield to nothing, but for ever to be a killing letter, and an instrument of the hardest bondage; or else at least to be so compliant as to yield to her citizens in the case of life and death.

§ 6. 4) All human power is given to man for his good, not for his hurt; for edification, not for destruction. But it very often happens,

[g] Lib. i. offic.-[cap. 4.]
[h] [Exod. xxi. 24; Lev. xxiv. 20; Deut. xix. 21; Matt. v. 38.]
[i] [Job ii. 4.]

and it is so in most laws that are merely human, that the good of the particular law is not so great as the saving the life of one man; and if such laws should not yield to the preservation of so precious a life, it were a law made for evil and not for good, a snare and no defence, an enemy and no guardian or friend.

§ 7. 5) Necessity is the band, and necessity is the solution of a law. *Necessitas facit licitum quod alias licitum non est*, saith Alexander *ad l. 'Si ex toto,' ff. de legibus*[k]. To the same purpose is that of Seneca[l], *Necessitas, magnum humanæ imbecillitatis patrocinium, quicquid cogit, excusat,* 'necessity makes every thing lawful to which it does compel.' But of all necessities that is the greatest which is the safety of our lives and a rescue from death: this case therefore is greater than the band of human laws.

§ 8. 6) The laws of God in precepts purely affirmative do not oblige to an actual obedience in the danger of death; that is, in such positive laws of God which do not involve a negative, of an intrinsic malice against a law of nature or of prime rectitude, the laws of God intend not to oblige, when death shall be the reward of him that does obey. Thus the Maccabees brake the rest of the sabbath to defend themselves against their enemies[m]; and the priests for the uses of religion, and the disciples of Christ to satisfy their hunger, and Christ was their advocate. Thus David and his followers did eat the shew-bread expressly against the commandment, but it was in his great need; and Christ also was his advocate and defended the fact: and if a probable necessity, that is a great charity and relief, which is but the avenue and the address of an extreme necessity, be a sufficient excuse from the actual observation of a law of God, positive and affirmative, much more shall an extreme necessity excuse from such a law, and therefore yet more strongly does it conclude against the pressure of a human law in such cases. And therefore the church hath declared that the ecclesiastical laws of fasting do not oblige in case of sickness or old age, or journey and lassitude, *cap. 'Consilium,' de observatione jejunii*[n]: and thus also no man is bound to go to church on a festival to hear divine service when an enemy lies in wait to kill him; that is, the laws of the church were intended for the good of the soul, and therefore not suffered to do hurt to the body; and as God affirms He will have mercy and not sacrifice, and therefore Himself makes His own laws, that can yield at all, to yield to the occasions and calls of mercy: so does the church in the imitation of God, whose laws and gentleness is our best measure; not that every little excuse and trifling pretence can excuse, but the danger of death, or sickness, or some very great evil reasonably feared; of which I shall by and by give an account.

[k] [Quoted by Suarez, de leg., lib. iii. cap. 30. § 12. p. 189.]

[l] [lib. iv. controv. 27. tom. iii. p. 321.]

[m] [1 Macc. ii. 41; 2 Macc. xv. 1—27.]

[n] [Greg. ix. decret., lib. iii. tit. 46. cap. 2. col. 1290.]

§ 9. Although the rule thus understood be certain and evident for these reasons, yet there are some *adversaria* or seeming oppositions very fit to be considered; because although they do not evacuate the intent of the rule, yet they give limit and further explication to it.

§ 10. 1) Cajetan affirms every law that binds under pain of mortal sin, does also bind to obedience though death attend it: and his reason is, because we must rather die than commit a sin; and therefore let the instance be what it will, if it ties to obedience by obliging the conscience, it is a sin to disobey, and rather than sin we must choose to die. 2) And that no man should question the power of the superior in obliging to suffer death, we find by the practice and consent of all the world that princes can call their subjects to battle, and command their officers upon dangerous services, and the soldiers are bound not to desert their station; and the master of the ship was obliged to put to sea in a storm when Cæsar bade him. 3) For since the law is intended for a public good, the private interest (be it never so great) is not to be put in balance against it. And therefore as it is in the laws of God, and in the confession of faith, the brave sons of Eleazar did suffer death with torments rather than eat swine's flesh°, and the martyrs gave their lives in a willing sacrifice rather than deny their faith: so in their proportion it must be in the laws of men, they must be kept up though we die for it. *Melius est ut unus quam unitas*, 'it is expedient that one man die for the people,' one member for the whole body; rather one than the unity be dissolved and the community ruined.

§ 11. To these things I answer, first, that the proposition of Cajetan is not true in its latitude. For whatever binds to obedience under pain of sin, does not intend to bind to obedience with the loss of our life under sin. It is true that we must rather die than sin; but we do not sin in not obeying, when he that obeys shall die for it; and that being the question ought not to be presumed by any opponent in prejudice of truth or probability. Human laws bind to obedience, and God's law annexes the penalty of sin; but then God's law coming in to second man's law, seconds it but in what it would oblige. But human laws do not intend regularly and in all cases to be obeyed with the loss of life or limb; and when the law does not sufficiently express such intention, we are to presume for liberty and mercy. Now that which follows is true in some sense; the public is to be preferred before the private, and the supreme power can oblige the subjects to suffer death or to venture their lives: but this cannot be in all cases. For if in all, then is the magistrate the lord of life and death, which is God's peculiar; but if he could in no case, then he were not the minister of life and death, which is communicated to the magistrate. The enquiry therefore now is, since regularly he

° [2 Macc. vii. 1. The seven brethren are not however called sons of Eleazar.]

cannot, and yet extraordinarily the supreme power can tie on his laws upon our shoulders with the cords of death, in what cases this is true, and in what it fails.

§ 12. 1) When a law is decreed by man with the appendage of a penalty of death for its sanction, it can bind to obedience though death be in it. For since the matter of the law is by the legislative power valued at the price of our lives, and by accident the very keeping of it as well as the breaking is set at no less price, the evils of either side being equal, the presumption and advantage must be on the part of justice and the law, not for injustice, tyranny and disobedience. And so much the rather, because that the obedience should cause death is but rare and accidental, not foreseen, but seldom happening; but the law threatening death to the disobedient is a regular, constant, observed, and declared provision: and therefore that which is for good, and regularly is established by the fear of death, is not to be put out of countenance by a contingent, rare and extraordinary fear, and which also is intended for evil; for which in this case there could be no provision, and therefore there ought to be no regard. But this holds only in case that death on either side be equally certain; for if it be certain that the obedient man shall die by the hand of a tyrant, or an accident that is prepared, and it be likely he may escape from the hands of the law by concealment, or by the relief of equity or charity, then the natural right of self-preservation will be his apology; this man despises not the law, but extricates himself as well as he can, and for a reason which of all considerations merely human is the greatest.

13. 2) When the tyrant power threatens death to obedient subjects, for no other end but that the subject should contemn the law, then the superior can oblige us to obedience though we die for it. For it is in this as in those positive and affirmative laws of God, which although they yield to save the subject's life, yet they will never yield in the corruption of the subject's manners: that is, they yield in charity, but not to serve a tyrant's lust. And thus we understand the reason of the difference between the cession of the law of the sabbath in the case of the Maccabees, and the not cession of the prohibition of swine's flesh in the case of the Jewish subjects. For the fear of death was equal to them both; if the princes did not fight upon the sabbath they should be cut in pieces, and if the subjects did not eat swine's flesh they should die with torments. But they preserved themselves, and these did not, and both were innocent. The reason of the difference is plainly this; they that offered swine's flesh to these did it as enemies of the religion; they that fought with those upon the sabbath did it as enemies of the nation, only they would take advantage by the prohibitions of the religion. Now when death is threatened by the enemies of the religion, it is with purpose to affront it, or destroy it; and therefore if the mother and her seven sons had complied, it had been a renouncing of their

faith and their religion, and a contempt of their law, which could not be supposed in the other case of the princes, not only because both the princes and the army could not be supposed to be despisers of the law, but also because that very breaking of the law was with fighting in the defence of the law and the whole nation. And so it is in human laws; the sacredness of the authority may be established with our life, and because to contemn them is always a sin, we must rather die than do it, though the matter of itself be less and do not require it. But this is also to be limited: for it is true that we must rather die than contemn the laws; but yet he that breaks them for no other reason than to save his life is not a contemner of the law, for he hath great reason, and a great necessity; and therefore it is not contempt, but is to be presumed the contrary; therefore this is to be understood, when

α.) Either the law expressly commands we should die rather than break it; or

β.) Hath declared that in such circumstances to comply shall be a contempt by interpretation; or

γ.) When it is notorious that it is so intended by the tyrant power: and

δ.) The lawgiver expressly requires our fortitude and resistance; for unless it be in such cases, though the law can bind, yet it does not. The sum is this, when death is likely to be the consequent of obedience by accident and the chance of things, or the providence of God abstractly, then it is not to be expounded to be contempt. Because in such cases God tempts not: but when an enemy or a tyrant power tempts with the fear of death, he does it in defiance of the law or the authority, and therefore here we must obey and die. And this distinction is very much to be regarded: for if a prince or an ecclesiastic superior make a law, it is to be presumed that they do it not (for they have no interest to do it) in despite of chance to bind to obedience in the danger of death; and therefore it is a rack of their power to extend it to such a case. But they may have interest and public necessity to exact this obedience when an opposite power threatens death that they may destroy the law.

§ 14. 3) The same also is the case of scandal, or injury to religion, or the confession of our faith, in all which cases we are obliged to die rather than break a positive law of God or man. And this is that which S. Austin[p] said, *satius est fame mori quam idolothytis vesci*, 'it is better to die with hunger than to save our lives by eating things sacrificed to idols.' That is, when the so doing is an interpretative renunciation of our religion, or the laws of our superior forbidding it, or is a scandal to a weak brother. And this is it that S. Paul[q] said, "I will eat no flesh as long as the world stands rather than cause my brother to offend." But in this there is no difficulty.

[p] Lib. de bono conjug., cap. 16. [tom. vi. col. 330 D.] [q] [1 Cor. viii. 13.]

§ 15. 4) Human laws bind to their observation though with the danger of death, when that danger is either expressly in the law, or in the matter and instance of it annexed to the obedience. Thus the supreme power can command the curates of souls to attend a cure in the time of the plague, to go to sea in a storm, to stand in a breach for the defence of the army. For in these cases he that hath power to do it hath expressly commanded it; and to undergo the danger of death is of the substance of the action and obedience, and is neither besides the intention nor the knowledge of the lawgiver: and therefore if the law did not bind to obedience notwithstanding the danger of death, it were no law at all. For to a prince commanding to go to sea in a storm, it is in vain to say it is a storm; and that soldier is a fool that tells his general he is afraid to die, when he sends him upon an honourable service.

§ 16. 5) But all these cases are to be provided so that they be *in gravi materia*, that the cause be great, and the necessity urgent, and the public good concerned; for men's lives are not to be jested away: and though Scipio Major[r] had power to carry his three hundred brave fellows (that he so boasted of in Sicily) to the African war, yet he had no power to command them to run up the neighbouring tower and leap headlong into the sea for bravery and to shew his power.

§ 17. 6) One thing more is to be added. In those cases in which human laws do oblige even in the danger of death, they do not oblige but for their whole portion; that is, when the whole end of the law is not destroyed or hazarded by the disobedience, but that the caution and end of the law may be secured and observed in all or in the greatest part, a man may then by not observing the law save his own life and be innocent. And this is the rule of Aquinas, and it is very reasonable, *Quando est causa rationabilis, et non impeditur finis legis, non peccat mortaliter qui non observat legem,* 'upon a just cause a man may without a crime break a law, when by such transgression the end of the law is not hindered.' As if a law be made that corn shall not be transported, because of an imminent famine, and for the preservation of the citizens, if any man to save his life shall comply with an inevitable accident and necessity, and carry some abroad, his necessity is a just excuse, because he hath not destroyed the end of the law, since his proportion and lading causes no sensible detriment to the public: and though every single man must not pretend that his single proportion will be no great matter, (because that is not sufficient unless there be a great necessity to do it,) yet when there is such a necessity it will suffice that he did it not but upon a violent need, and what he did was not a destruction to the end of the law; and his example cannot have any evil effect of itself; for other men cannot say, why may not I as well as he?

[r] [Plutarch. apophth., tom. vi. p. 741.]

Unless the necessity be as exemplary as the action, and unless they be in the like evident danger of death, they cannot pretend to the like impunity. They that are in no danger may not, but he that is may, when the subject's safety can stand with the safety of the public. For although the head may expose one member to loss and amputation to preserve the whole, yet when the whole can be safe without it, the member may preserve itself and refuse to be cut off: and nothing is greater than the safety of a part but the safety of the whole.

§ 18. But the rule affirms that not only danger of death, but the avoiding of a very grievous and intolerable evil is sufficient to excuse disobedience to human laws from being a sin. But this is particularly to be considered in the following rules.

RULE III.

THE LAWS OF OUR SUPERIOR THAT ARE NOT JUST AND GOOD DO NOT OBLIGE THE CONSCIENCE.

§ 1. LAWS are public mischiefs if they bind to injustice; and therefore to establish any thing that is unjust or evil is against the nature of laws, and the power of the superior, and the intendment of the supreme. For God gives to no man power above or against Himself.

Now a law is unjust upon many defects.

§ 2. 1) If it be made by an incompetent person, that is, one who hath no authority. Caius and Seius were fellow servants to Ruricanus. Caius commands Seius to go to plough. Sejus demands *Quo jure?* And he was in the right. Cajus was the wiser man, and he was the older, and better employed, but he was not his lord. *Par in parem imperium non habet,* says the law[s].

§ 3. 2) If it be made in an incompetent and undue matter. When Saul commanded the man of Amalek, *Sta super me, et interfice me*[t], 'fall upon me and kill me;' he was indeed a prince, but in that matter he could make no law, and therefore was not to be obeyed. And the ancients tell that when Mercury was accused for the murder of Argus, though he pleaded that he did it by the command of Jupiter, yet the gods did not acquit him: and though Mark Antony did worse for his own revenge to kill Cicero, yet Pothinus did ill too when he killed the brave Pompey, though at the command of his master Ptolemy.

[s] Clement. 'Exivi de Paradiso,' de verb. signif. [? Greg. ix. decret., lib. i. tit. 6. cap. 20. col. 125.]

[t] [2 Sam. i. 9.]

Antoni tamen est pejor quam causa Pothini;
Hic facinus domino præstitit, ille sibi[u].

Anthony was infinitely to be condemned, and Pothinus not to be justified. And upon this account every law made against religion, or any thing of divine sanction and commandment, is void, and cannot oblige the conscience. To which purpose who please may read an excellent discourse of S. Bernard in his seventh epistle, which is to Adam the monk. Upon this account a thief cannot begin a prescription against the right of the just owner, because his theft being against the law of God cannot begin a just title by the laws of men. Thus although the laws[v] permit a man to possess what by an unjust price or bargain he hath acquired, yet because this is unjust and uncharitable to deceive his neighbour, the injurious person is bound to restore, and is not indemnified before God by any warranty from the contrary civil law: "Ye shall not lie," saith our Lord God[w], "nor deceive every one his neighbour:" and let "no man defraud or circumvent his neighbour in bargaining," saith S. Paul[x]; κατὰ τὴν ἀγορὰν ἀψευδεῖν, said the old Attic law[y], from the voice of nature; which Cicero[z] well renders, *tollendum esse ex rebus contrahendis omne mendacium*, 'no lie must at all be used in bargaining:' and therefore the law of man to the contrary is invalid; though I suppose the civil law intends only to bar an action in the outward court, but not to give warrant to the conscience.

§ 4. 3) Human laws may be unjust when a just power in a competent matter passes on to excess and goes beyond its bounds. He that excommunicates one that is not of his diocese does not oblige the excommunicate person by the sentence: and Pilate had nothing to do with the holy Jesus till Herod had sent Him back to him; for to his jurisdiction He did belong. Thus if a priest or a bishop absolves a guilty person, he binds himself, but looses not the other. For no excess of power produces any effect of law, or tie upon the conscience. And to this purpose is that rule of the law, *Sententia a non suo judice lata, nulla est*[a]: which is excellently rendered by S. Paul[b], "What art thou, O man, who judgest another man's servant?" Upon this account, all human laws prescribing to the conscience, or giving bounds to the thoughts, are null. For in these things God only is judge, and all other judicatories are incompetent: I say all other judicatories; for as for sentences declaratory of a divine law, that is not under this restraint. But of that in its own place.

[u] [Mart. epigr., lib. iii. 65.]

[v] L. 'In causæ,' § 'Idem Pomponius.' ff. de minoribus. [Digest., lib. iv. tit. 4. l. 16. col. 118.] et l. 'Item si precio,' § 'Quemadmodum,' ff. Locati conducti. [lib. xix. tit. 2. l. 22. col. 557.]

[w] [Lev. xix. 11.]

[x] [1 Thess. iv. 6.]

[y] [Hyperides, in orat. contr. Athenag. —Harpocration et Suidas in voc. κατὰ. Cf. Diog. Laert. in vit. Anachars., lib. i. cap. 8. tom. i. p. 75.]

[z] [Offic., lib. iii. cap. 15.]

[a] Cap. 'At si Clerici.' in princip. De judiciis. [Greg. ix. Decret., lib. ii. tit. 1. cap. 4. col. 493.]

[b] [Rom. xiv. 4.]

§ 5. 4) Human laws may be unjust by a defect of the just and due end; that is, when the law does not contribute to the public advantage, but wholly to his private who made the law. If the law be apt to minister to the public good, whatever the private interest and design of the prince be, it may spoil the man but not the law. If a prince espying the luxury of feasts and garments make sumptuary laws, and impose fines upon the transgressors, and does this only to get the money, indeed he is not a good man; but so long as the law is good, it does oblige the conscience. The enemies of the memory of king Henry VIII. of England pretend that he annulled the pope's authority in England only upon designs of lust and revenge. Suppose this true; yet as long as he did good, though for evil ends, it is the worse for him, but not for us; but if the prince does not, yet the law must intend the public benefit: and that also is the duty of the prince. *Non prospectantes proprii jura commodi, sed consulentes patriæ atque genti,* said the fathers of the eighth council of Toledo[c]; 'kings must not look after their own profit, but make provisions for their country and their people.' *Officium est imperare, non regnum,* 'to rule is not empire, but office,' said Seneca[d]; and therefore the Greeks call kings ἄνακτας, ἀπὸ τοῦ ἀνακῶς ἔχειν, saith Plutarch[e], that signifies persons appointed to take care and defend the people.

Tu civem patremque geras, tu consule cunctis,
Non tibi, nec tua te moveant sed publica damna[f].

'Take care of the public, not of thy particular, and let the common calamity move thee most:' and since the power itself is designed for the public good, the laws must be so too. And therefore when the law[g] says that a law ought to be a common precept; that is, *pro communi utilitate statutum,* says the gloss, that is, 'it must be for the common good.' *Conditur utilitatis gratia lex,* says Plato[h], 'every just law is made for the good of the people:' and from him Marsilius Ficinus defines a law to be 'a true manner of governing, which by profitable ways tends to the best end,' that is, the public good; and Isidore[i] says, *Lex erit omne quod ratione constiterit, duntaxat quod religioni congruat, quod disciplinæ conveniat, quod saluti proficiat,* 'a law is that which agrees with reason, that is consonant to religion, and accords with discipline, and is profitable and does good.' And therefore if a prince make a law which is for his own profit, and not for the public good, he is a tyrant; and his laws have no sanction but fear, and no tie at all upon the conscience. And this is the doctrine of Aristotle[k], Ὁ μὲν γὰρ τύραννος τὸ ἑαυτῷ συμφέρον σκοπεῖ· ὁ δὲ βασιλεὺς τὸ τῶν ἀρχομένων· 'a king and a

[c] Cap. x. [tom. iii. col. 965 A.]
[d] [Epist. xc. tom. ii. p. 403.]
[e] [In vit. Thesei, cap. 33. tom. i. p. 69.]
[f] Claudian. ad Honor. [de iv. consul., 294.—'sed publica vota,' edd.]
[g] L. i. ff. de legibus. [digest., lib. i. tit. 3. l. 1. col. 9.]
[h] In Hippia. [major. cap. 10. tom. vi. p. 193.]
[i] [Etymol., lib. v. cap. 3. § 4. tom. iii. p. 192.]
[k] Ethic., lib. viii. cap. 12. [tom. ii. p. 1160.]

tyrant differ very much; a tyrant considers his own profit, a king the profit of his people;' and under this consideration comes that prince that lays grievous burdens upon his people. Τοὺς γὰρ τὰ μεγάλα, μὴ ὅθεν δὲ δεῖ λαμβάνοντας, μηδὲ ἃ δεῖ, οἷον τοὺς τυράννους, πόλεις πορθοῦντας, καὶ ἱερὰ συλῶντας, οὐδὲ λέγομεν ἀνελευθέρους, ἀλλὰ πονηροὺς μᾶλλον καὶ ἀσεβεῖς καὶ ἀδίκους[l], 'those that take great sums from them they ought not, and those which they ought not, as tyrants, destroyers of cities and robbers of temples, we do not call them covetous, but wicked, and impious, and unjust.' And therefore they who do such things by laws made on purpose, do it by tyranny, and therefore not by law, or just authority, and consequently by none. In such cases we must suffer as it happens: but we may avoid the burden of the law, where we can peaceably and privately. For all such things as are against the good of the subjects, the law itself declares to be no law; that is, to be more than the superior hath right or leave to do. *Nulla juris ratio aut æquitatis benignitas patitur ut quæ salubriter pro utilitate hominum introducuntur, ea nos duriore interpretatione contra ipsorum commodum producamus ad severitatem*, says the law, *l. 'Nulla,' ff. de legibus*[m]: 'no law, no charity suffers us to make that by interpretation hard and against their profit, for whose profit it was first decreed by a salutary sanction.' And therefore it is observable that all laws do infinitely decline all harsh senses, and are ambitious of gentle and benign interpretations; which is in the whole world the greatest declaration that lawgivers as they ought not, so they profess they do not intend to grieve the subject by an unequal burden. It was a princely saying of Trajan[n], when he put a sword upon the thigh of the prefect of the prætorian bands, *Cape hunc, et si quidem recte et ex utilitate omnium imperavero, pro me, sin aliter, contra me utere*, 'use this sword on my behalf if I govern rightly and to the public benefit; if not, use it against me.' That was too much, but his purpose was excellent; he knew it was his duty to rule by that measure only, beyond that his power was incompetent; Ὁ γὰρ μὴ τοιοῦτος, κληρωτὸς ἂν τις εἴη βασιλεὺς· ἡ δὲ τυραννὶς ἐξ ἐναντίας ταύτῃ, 'he that does not so is a king by fortune,' but indeed a tyrant, and any thing rather than a king. Τὸ γὰρ ἑαυτῷ ἀγαθὸν διώκει, says Aristotle[o], 'for he pursues his own, not his people's good:' and that is φαυλότης μοναρχίας, 'the stain of monarchy,' that is plainly tyranny. Tiberius[p] said well, *Dixi et nunc et sæpe alias, P. C. bonum et salutarem principem, quem vos tanta et tam libera potestate instruxistis, senatui servire debere, et universis civibus; sæpe ac plerumque etiam singulis, neque id dixisse me pœnitet:* 'a good and a gentle prince ought to serve the profit of his nobility, his senate and citizens; not only all but each single citizen, as there is occasion:' and therefore Rudolphus of Austria

[l] Lib. iv. eth. Nic., cap. 3. [p. 1122.]
[m] [Digest., lib. i. tit. 3. l. 25. col. 11.]
[n] [Aurel. Vict. de Cæsar., cap. 13. § 9.]
[o] [ubi supra.]
[p] [Sueton. in Tiberio, cap. 29.]

was very angry with his guards for hindering petitioners to come to him; 'Let them come,' says he, 'for I was not made an emperor to be shut up in a box.' *Sinite parvulos ad me venire,* saith our blessed Lord[q], the King of kings, and the Lord of lords, 'Suffer My little ones to come unto Me.' But the reason and demonstration of all is contained in those words of Seneca[r], saying a prince should think with himself, *Ego ex omnibus mortalibus placui electusque sum qui deorum vice in terris fungerer,* 'I am chosen from the heap of mortals to stand in the place of God;' to do as He does; that is, to do all things justly, and to do all things for the benefit of the people: now since the prince hath his power from God, he can have no power to do otherwise than God does. *Admittere in animum totius reip. curam et populi fata suscipere, et oblitum quodammodo sui, gentibus vivere; noctes omnes diesque perpeti solicitudinem, pro salute omnium cogitare:* so Pliny describes the office of a prince, 'to take care of the whole republic, to live to them not to himself; days and nights to suffer anxiety in thinking for the profit and welfare of all.' This is the limit of a prince's power so far as he relates to conscience. For beyond this the conscience is not bound. The body is, and we must suffer patiently the evil which we cannot deprecate; but laws that are made to purposes beyond these measures do no ways oblige the conscience. "He is the minister of God for thy good," saith S. Paul[s]: otherwise he is not God's minister, and hath to other purposes none of God's authority, and therefore cannot oblige the conscience to an active obedience in such where his power is incompetent to command.

§ 6. 5) Thus when a law by the change of things or cases is become an enemy to the common good, it is not to be observed, saith Aquinas; and he gives this instance: a law is made that in the time of sieges the gates of a city be always kept shut; but the guards are not tied to obey this law when the citizens fly thither from the danger of the enemy: and so in all equal cases, concerning which this is the rule.

§ 7. The prince is to be presumed good and gentle; and if he be not so, he is to be supposed so, and made so at least by fiction of law: whatsoever therefore case does happen in which the citizens are grieved, it is to be supposed that it is besides the intention of the law, and was not in the provision of the prince; but we are to rely upon this, that he who is good and gentle, and a father of his country, would, if he were here and observed this evil, untie the law, that he might not tie us to the evil: and because he is not here, but his will is here, the law with so much evil to us is not to be observed; for his leave to break it is to be presumed.

§ 8. 6) Hither is to be reduced the injustice of unequal distribu-

[q] [Matt. xix. 14; Mark x. 14; Luke xviii. 16.]

[r] De clement., lib. i. [cap. 1. tom. i. p. 425, 6.]

[s] [Rom. xiii. 4.]

tions; such as is a law forbidding beggars to go from place to place to seek relief when there is no relief at home; the law of commanding every village or parish to provide for their poor, which indeed is piously and charitably intended, but because when it is reduced to practice it falls heavily upon some, and others touch it not with the top of their fingers, the law which was good *in thesi*, proves unjust *in hypothesi*, and therefore does not oblige the conscience; but they who are under it may not only seek relief by petition, but by avoiding it where they can piously and charitably, according to the measures by and by to be described. For it is the voice of natural justice and reason, which S. Paul[t] urges to his charges, "not that there should be ease to one and burden to another:" this is against equity, as having in it so great disproportionate inequality.

§ 9. 7) Lastly, of the same consideration it is, that in the making laws of burden there be equality and proportion between the burden and the cause of the imposition; that the burden be not greater than the evil it intends to remedy, nor the remedy greater than the disease needs, nor yet greater than men can bear. For what is excessive in these cases is against the charity and justice of the prince, and is matter of rapine and impiety, not of subsidy and prudent provisions: and therefore though it may oppress the subject, who hath no remedy but prayers and tears; yet the conscience is at liberty, and may procure remissions by any ways of peace and piety.

§ 10. But in the reducing of this to practice these cautions are to be observed.

1) That though the conscience be free from all laws which are unjust upon any of these accounts, yet that the law be not disobeyed with the scandal and offence of others, it must be so done that none be taught to rebel, or evacuate the law upon pretences and little regards, nor that our duty and religion be evil spoken of, nor that the superior be made jealous and suspicious. When our blessed Saviour had proved Himself free from tribute, and that in conscience He was not bound to pay it, yet that He might not give offence He submitted to the imposition. And this caution is given by all the doctors who follow Bartholus in it, *capite i. de constitutionibus.*

§ 11. 2) The inconvenience of the republic must not be trifling and contemptible, but so great as must in the judgment of good and prudent men be a sufficient cause of annulling the law, so great as must reasonably outweigh the evil of material disobedience. And therefore in the injustice of unequal distributions, and imposition of taxes, we are not to complain for every little pressure, nor yet to weigh the proportions in gold scales; for it is a greater duty of

[t] [2 Cor. viii. 13.]

charity that the subject quietly bear a little load for peace sake and example and compliance, than it can be of duty in the prince to make such exact, curious, and mathematical proportions.

§ 12. 3) The inconvenience and injustice must be certain, notorious, and relied upon, before it can be made use of to the breach of a law. For it is no warranty to disobey, that I fancy the law to be unjust: and therefore in this case the best security we can have is, that either it be so declared by the voice of all men, or the more sober accents of the wise men, or be evident in itself according to the strictest measures; for where there is a doubtful case, the presumption always is for obedience, not against it: for although usually in doubts the presumption is for liberty, yet that is either between private persons, or when the superior makes a doubt concerning his own laws: then he is to judge for liberty and ease; but in our own cases, and in dispute with a law, the presumption is on behalf of the law, because ordinarily that is the greatest interest and the greatest reason.

§ 13. 4) When there is a favourable case for breaking a law, if we have time and opportunity we must ask leave of the superior: because as that does honour to the superior, and gives value to the law; so it is the greatest course of security, because it makes him judge who only can complain. But to this we are not obliged if the case be evident, or if the danger of evil be imminent and sudden, and there be no time or opportunity to require it: in these cases a leave is to be presumed, or else it need not, for the law does not oblige.

§ 14. 5) This is to be practised only when the law is against the public good. For if it be still consistent with the public interest, though it be against the good of a particular person, the law hath left a power of dispensation in the appointed ministers; but a private person may not so easily break the law, at least he is tied to other conditions, and more caution, and a severer conduct; of which I am to give account in the chapter of the diminution of laws. But for the present, the difference is only in speculation: for notwithstanding the personal inconvenience, the law does still bind the conscience of the subjects in general; but if it be against the public emolument, then the law ceases, and it does not oblige. In the first case the particular is to be relieved by a way of his own, of which I am afterwards to speak; but in this case the conscience is at liberty. Thus when the church makes a law that upon a certain day the people shall meet in public, and spend their day in fasting and prayer; it is a good law, and may be for the public good, though Petronia and Abbatilla be with child and cannot fast: all are bound, but from these the yoke may be lifted up for the present. But if a church make a law that all the clergy shall lose their livings and their office if they marry; here there is a mischief to the public, to a whole order of men; and the law cannot do so much good acci-

dentally as it directly does mischief. And the confession of Suarez[x] upon another occasion, but in this very instance, is remarkable, *Custodiam virginitatis esse opus supererogationis, quod necessariam non habet conjunctionem cum fine publici commodi; et ergo non posse præcipi lege humana,* 'that virginity should be kept is a work of supererogation, that hath no necessary conjunction with the end of any public good; and therefore cannot be enjoined by a human law.' Either then the law of the church of Rome forbidding the clergy to marry, does not tie them to be virgins, but gives them leave to fornicate; or if it does tie them to a virgin state, she makes a law which is not for the public good, and therefore in which she hath no competent authority. This therefore is an unjust law, and does not oblige the conscience. Δεδιδάγμεθα ἀρχαῖς καὶ ἐξουσίαις ἀπὸ Θεοῦ τεταγμέναις τιμὴν κατὰ τὸ προσῆκον τὴν μὴ βλάπτουσαν ἡμᾶς ἀπονέμειν, said Polycarpus[y]; 'we are taught to give to princes and the powers set over us by God such honour and obedience as may not hurt us.'

RULE IV.

A LAW THAT IS FOUNDED UPON A FALSE PRESUMPTION DOES NOT OBLIGE THE CONSCIENCE.

§ 1. The case is this; Francisco Biretti, a Venetian gentleman, full of amours, and used to vain and wanton addresses, courts Julia, a senator's daughter, but with secret intent to abuse her and so to leave her. Marco Medici, father of Julia, by threats and harsh usages forces his daughter Julia to consent to a contract with Francisco: who perceiving himself surprised, and that the matter was passed further than he intended it, resolved to make the best of it, to make a contract, to lie with her, and so to leave her. He does so, surprises her in the careless hours of the day, and the nakedness of her soul, and with flatteries mingled with the affrighting name of her harsh father, acts his intention, and then pursues it till he was weary of her, and then forsakes her. She complains, and desires remedy. The law declares their congress to be a marriage. But in the mean time Francisco passed into Sicily, and there married Antonia Peronetta, a Sicilian lady; her he loved, intended to make her his wife, and did so. Now the law presumes that after contract their congress did declare a marriage, *cap.* '*Is qui fide*[z],' and *cap.* '*Tua*

[x] Lib. iii. de legib., cap. 30. § 11. [p. 188. ed. fol. Lond. 1679.]

[y] [Epist. eccles. Smyrn. apud Euseb. H. E. iv. 15. p. 168.]

[z] [Greg. ix. decret., lib. iv. tit. 1. cap. 30. col. 1330.]

nos,' de sponsal.[a], for it supposes and presumes a consent, and yet withal says if there was no consent it was no marriage. Here Francisco is condemned by the presumption, and relieved in conscience. For if he did not lie with her *affectu maritali*, but only intended to abuse her, he was indeed extremely impious and unjust; but he made no marriage, for without mutual consent marriages are not made. Yet because of this the law could no way judge but by outward significations, and *ut plurimum* 'for the most part' it is so that contract and congress do effect as well as signify a marriage, the law did well to declare in the behalf of Julia: but Francisco, who knew that which the law could not know, was bound to make amends to Julia as well as he could, but to pursue the marriage of Antonia, and dwell with her. For the presumption upon which this law was founded was false; the congress did not prove a marriage, for it was never intended: the presumption was probable, but failed in this instance, and therefore in this case did not oblige the conscience. Conscience is to be guided by presumptions when it hath no better guide; but when it hath a certain truth to guide it, it is better than the best presumption or probability. Besides this, when a law is made upon a supposition, and relies upon that alone, in case that should fail it is to be presumed that the lawgiver does not intend to bind. When the men of Ægina were at war with the Athenians, they made it death by their law for any Athenian to be seen in their country. But when Plato was made a slave and was carried thither by a storm, one of the citizens saved his life by an artifice, and did it according to the intention of the law. For the law being founded upon a presumption that if an Athenian came thither it was for evil to their town, they could not suspect that Plato had such an evil intention, when they knew his case and his sad story; and therefore ought to judge him quit from the burden of that law. Dom. Joseph of Carreras, a Spaniard, walking one night in Seville, was taken by the *alcalde*, and found to have arms about him, against the law; but carrying of him to prison they found at the end of that street a man newly murdered: the law presumed him to be the murderer, as it does aptly suspect such persons who at unseasonable times walk armed: he was accused, but finding friends was acquitted for his life, but sentenced to maintain the widow and children of the dead man. He knew himself innocent, and therefore was not bound in conscience to maintain her; because the law, relying upon a false presumption, was a dead letter, and could not bind.

§ 2. But that there be no error in the practice of this, we must distinguish of presumptions. One sort is in matter of fact, the other is upon presupposition of dangers usually arising: that is of justice, this of caution. The examples which I have already brought are all mere and unmixed presumptions of fact; in which cases the rule does hold without exception. But in presumptions of caution it is other-

[a] [ibid., col. 1326.]

wise. The law does irritate and evacuate the contracts of minors, because they being weak and indiscreet it is presumed that they do it foolishly whatever they do; and it is fit that the laws should be their defensatives against the evils of their ignorance. But now some minors under sixteen years of age are of a ripe wit, and competent judgment, and have craft enough to make a bargain, to consider what they promise, and to beware of the artifices of evil men. But yet although the presumption of the law fails as to their particulars, yet their parents may annul their promises, their vows, and their professions, though the presumption of the law in their case do fail. The reason of the difference is this: in presumptions of fact, if the truth of the fact fails, the whole foundation of the law does fail, for the foundation is indivisible, and the law had no other support; if any thing of it fails it all fails. But in presumptions of caution, or of presupposition of danger which does usually happen, it is wholly otherwise; for though it does fail in some instances, yet it is true in most, and that is sufficient to support a law which looks after that which is most common, not after rare emergencies. And therefore the law in this case does not in proper speaking rely upon a presumption, but a certain judgment; for it is certainly true that it is so most commonly, and it is presumed so of every particular: at least the law knows not how to distinguish them, and therefore is a just and a wise law, conducing to the public benefit, and consequently is a good measure to the conscience.

§ 3. Only this caution is to be inserted, that if a minor make a contract, as if a young man under sixteen, or a maiden under fourteen make a contract of marriage, although this is not valid in law till their years of consent be completed; yet if they have a mature judgment otherwise than the law did presume them to have, they are tied in conscience to verify this contract, if all those conditions were observed which could make the act valid in the law of nature, because no civil law can evacuate a natural; and where they are naturally able, they are by their own act under that law naturally obliged: but this, although it be an essential consideration as to conscience, yet it is wholly extrinsical to this rule.

§ 4. But there is one distinction more of use to the explication of this rule. Laws founded upon presumption are either laws of favour or laws of duty. Those that are made in favour may be made use of only when that supposition upon which it is founded is really true, but must not be used to the prejudice of any, whether it be true or false. And of this nature, or reducible to it, is the case that Cicero *De oratore*[b] speaks of. A Roman citizen supposing his only son to be dead, declares a kinsman to be his heir. The son afterwards appears, and by a true presumption that if his father had supposed him living he would not have disinherited him, is relieved against a false presumption which supposed him dead. And it hath left a stain

[b] [lib. i. cap. 38.]

upon the honour of David's justice and friendship with Jonathan, that when he had listened to the false information of Ziba against his friend's son Mephibosheth, and gave the land to the informer; he yet upon a right notice of the cause restored but half. For this cause, say the doctors of the Jews, God divided his kingdom, and gave the bigger half from his grandchild Rehoboam to his servant. But if the laws be matter of duty, and enjoin something that is good or useful to the public, whether the presumption be right or wrong, they do oblige: and the reason is, because the presumption, whether it was in fact or in caution, yet it was not the whole foundation of the law; or if it was alone built upon it at first, yet it is supported by other arguments strong enough to affirm the law. If a law were made in England that whoever comes not to divine service in public churches should be punished by a mulct of twenty *li.* a month, the fine of recusancy, upon a presumption that he that is absent is so indeed, this law were as much incumbent upon them that are not recusants: for although the law was at first made upon that presumption, yet because otherwise it commands a very good act, which alone and without the presumption were a sufficient inducement to the law, the conscience of those who are, and those who are not in the first presumption are equally obliged.

RULE V.

HUMAN LAWS DO BIND THE CONSCIENCE TO OR FROM AN ACT IN SECRET, AS WELL AS IN PUBLIC.

§ 1. SOME things are secret or private in their own nature, such as are only the prerogative of God to judge of; as the word of the mind, the thoughts of the heart, the desires and repudiations of the affections, the inclinations and tendencies to an object, love and hatred, the pleasures or displeasures of the fancy, acts of judgment and understanding. These God only knows, and He only punishes. Others are secret, but yet they are such only by accident, and for want of proof: and these also are more or less; for some are seen by one witness, and some by more; and they that are seen, either are brought to judgment or not. Now according to the parts of these distinctions, this rule is in several manners to be verified.

§ 2. 1) Those actions which were done in secret, but under the observation of a few, when they are brought to judgment change their nature, and become public, and therefore are equally under the power of the law, as if they were done in the market. For in the law that is called notorious which is either declared in judgment or

proved by witnesses, or evident by the intuition of the fact. And that actions in this sense at first secret are subjicible to laws, is clear by the very examination of witnesses and the whole process of law. For the judge takes notice of no other notoriety: if a judge sees a thing done, he cannot punish it; he must witness it, and another punish it[c]. All that is notorious to the judge must first be secret, and then public; that is, made manifest or notorious by witnesses and sentences of judges.

§ 3. 2) Some actions are secret, because they can be proved only by one witness. Now it is true that in some cases one witness is sufficient, as in the case of treason, or in case of confession, for his own witness against himself is as good as ten thousand: when it is so, it is *manifestum* as before, and therefore the same thing is to be affirmed of it. But if it be secret, so that it cannot be competently proved, it is true that the law does not punish it; but it fain would, and therefore declares that the private action is a disobedience and transgression.

§ 4. 3) If the action be done wholly in secret, then indeed the criminal judge takes no notice of it, any more than a man abiding in the city does of his country house on fire before he knows of it; but as one is an unknown calamity to the man, so the other is an unknown transgression of the law. For that the thing is known or unknown it alters the case as to the punishment, yet nothing at all as to the offence, the scandal only excepted and the example. Now that the law does intend to forbid such actions, it appears by the acts of scrutiny, and the proceedings against such as come accidentally to be discovered. If a suspicion do arise or any probability, any fame or rumour, the law begins her process, somewhere by torture, somewhere by examination upon oath, and sometimes gives sentence upon conjectures. Now if to this it be replied, that this is the beginning of publication, and the law proceeds only in proportion to its being public, I answer, that it is true, she can proceed no otherwise; and therefore if the question here had been whether secret actions were punishable by human laws, I should have answered otherwise, and so the lawyers dispute it: but here the enquiry being whether the conscience be obliged, I am to say that the publication of it does not make it to be a sin: this reveals the action, and the law declares or makes it to be a sin; for a man is not hanged for theft unless he be discovered, but if he be, then it is for his theft he is punished, not for his discovery. The consequent of which is this; that if the action be against the law, be it never so secret, it is a sin: and here is the advantage of the wisdom and economy of God in the verification of human laws; He confirms the laws of men, and He binds in heaven what they bind on earth, and He also knows in earth what is done in the most secret corner, and judges accordingly.

§ 5. 4) But as for those things which are secret in their own

[c] [Compare vol. ix. p. 109.]

nature, such which are not only not known, but not cognoscible by human laws and judicatories, the case is much more difficult, it being generally taught by divines that no human laws have power to prescribe internal acts; and consequently that whatever we think or wish, so we do the thing that is commanded, the law of man is satisfied.

QUESTION.

WHETHER HUMAN LAWS CAN COMMAND OR FORBID INWARD ACTS.

§ 6. But having as well as I could considered the secret of this thing, I rest finally upon this account. It being certain and confessed that the laws of man have power to constitute actions of themselves indifferent into the order of virtue and vice, making that to be incest which before the law was not, and that to be theft which in other countries is lawful, and so in other instances; if the law does change the action only so as to make it merely to be an instance of obedience or disobedience, then the law hath no power over internal actions: for man is not the lord of consciences and minds, and we are not tied to obey any man commanding an internal act; his judicatory here is not competent, his authority is not sufficient. For it serves no end of the public, and it hath no judicatory, no cognizance, and no interest; and it were as foolish as for a king to sit upon the strand and command the waters not to flow to his feet. But if the law of man have changed an action not only to an instance of obedience or disobedience, but placed it also in the order of some other virtue or vice, as by changing it to incest, or adultery, or chastity, or temperance respectively, then the law of man hath power over the conscience even in the most secret act; not directly, and by the energy of its own power, but indirectly, collaterally, and by accident, by reason of the laws of God. The reason is plain: because it is not lawful to commit adultery, or murder, or incest in our heart; the law therefore that constitutes this action and makes it to be murder, does consequently oblige the conscience not so much as to desire it. *Voluntas facti origo est, quæ ne tunc quidem liberatur quum aliqua difficultas perpetrationem intercipit. Ipsa enim sibi imputatur, nec excusari poterit per illam perficiendi infelicitatem operata quod suum fuerat:* so Tertullian[c]; 'the will is the original of action, and is not freed when she is hindered from doing what she would. Her own act is imputed to her; for though no event succeeded, yet she did all her part.' Thus in the canon law, *Clementin.* 1. § *'Verum,' De hæreticis*[d], the inquisitor of heretical pravity is excommunicate if either out of hatred or hope of gain he condemn the innocent, or for love and favour absolve the criminal: upon which the gloss observes that the superior can punish the sin of the heart, though it never proceed to action;

[c] De pœnit. [cap. iii. p. 122 C.] [d] [Clement., lib. v. tit. 3. cap. 1. col. 251.]

and to this gloss Panormitan and Adrianus do consent. Now if it be objected that here is an action external complicated with the internal, and that the law proceeds against that, not against this; I answer, that the law cannot proceed to sentence against the internal unless it be some way or in some degree public: but that which I affirm is, that the law forbids the internal or commands it, and that in case the action be placed in the rank of virtue or vice distinct from the mere obedience or disobedience: and this is a pregnant instance of it; for the condemning the innocent is therefore the more forbidden and the more condemned because it is presumed to proceed from hatred. And therefore Cato argued well in behalf of the Rhodians, against whom it was moved in the senate that a war should be made, because they had some little light conjectures that they were not well affected to them; and because some of the Rhodians had moved that they might help Perseus the king of Macedonia, in case peace could not be obtained for him: Cato made an oration in their behalf, affirming it to be unreasonable to punish them because they had a mind once to have made a war. But this was therefore well said of Cato, because there was no proof that the Rhodians did intend it, and secretly or openly decree it. If they had intended it, it was penal; and when the intention had been proved, it might have been more reasonable to proceed to punish their breach of friendship. And this the Rhodians themselves confessed, that the Romans warred justly with Perseus for intending a war against them; but he so intended it, that he did something towards it: but no city, no nation would destroy them who did nothing towards the evil which they secretly intended. *Quis hoc statuit unquam, aut cui concedi sine summo omnium periculo potest, ut eum jure poterit occidere a quo metuisse se dicat ne ipse posterius occideretur?* said Cicero[e]; 'he indulges too much to his fear, and destroys the public, that will kill any man whom he is pleased to fear, or say that he would first kill him.' And the reason of that is, because there can be no sufficient proof of the secret thought, without it break forth at least into words and decrees and preparations. But *Injuriam facit, qui facturus est,* said Seneca[f]. If it appears he was about to do a mischief, he is guilty; his secret was criminal: and that is it which is punished as often as it can.

§ 7. And this is more evident in the civil law, *l.* '*Si quis non dicam rapere,*' *C. De episcopis et clericis*[g], where the very thought of ravishing a virgin is punished. It is true, this thought was declared by the attempt or address to it: but because it was not consummate, it is evident that human laws bind to more than to or from the external action. The law that punishes the criminal before he hath acted the evil, punishes the internal principally: for in the address and first preparations nothing is done but the discovery of the

[e] [Pro M. Tullio, cap. xii. apud Quintil. inst. orat., lib. v. cap. 13.]

[f] [De ira, lib. i. cap. 3. tom. i. p. 6.]

[g] [lib. i. tit. 3. l. 5. col. 24.]

thought; but when the thought is so discovered, and the action is not done, if the man be punished, it is not for the action, but for the thought. And to this purpose is that of Cicero in his oration *pro T. Annio Milone*[h], *Nisi forte quia perfecta res non est, non fuit punienda; perinde quasi exitus rerum, non hominum consilia, legibus vindicentur: minus dolendum fuit, re non perfecta, sed puniendum certe nihilo minus:* 'not to punish the fault because the mischief was not done is as much as to say that the laws are not avengers of evil purposes, but of evil events only: indeed if the mischief be not done we grieve the less; but if it was but intended we punish it nevertheless.' And to this Seneca in his controversies[i] gives testimony, *Scelera quoque, quamvis citra exitum subsederunt, puniuntur.* The same with that of Periander[k], Μὴ μόνον τοὺς ἁμαρτάνοντας, ἀλλὰ καὶ τοὺς μέλλοντας κόλαζε, 'not only those that do, but those that would sin are to be punished.' And to this sense all those laws which punish the affection, though the effect follows not, are to be understood, as *cap.* '*Pro humani*,' § '*Sacri*,' *de homicidio, l.* 6[l]. *et l.* '*Quisquis*,' *C. ad legem Juliam majestatis*[m]; *et cap.* 1. *de schismaticis*, § '*Omnem*,' *l.* 6[n]. *et l.* '*Fugitivus*,' *ff. de verborum signif.*[o], *l.* '*Divus*,' *ff. ad leg. Cornel. de sicariis*[p].

§ 8. But this is also further manifest in the differences of chance-medley, manslaughter, and wilful murder; where the action being wholly differenced by the thought of the heart, proves plainly that the thoughts also are punished by human laws ever when they are manifest. And if the divines and lawyers would distinguish in this question the punishment from the crime, the court external from the court of conscience, they would not err in this article. For although a man's thoughts without some external action are not punished, because they are not known; yet they could not be punished when they are known, if they were not punishable and criminal in themselves even against the laws of man. And therefore when Ulpian[q] had said, *Cogitationis pœnam nemo patitur;* Accursius adds, *Si statum in finibus cogitationis est:* 'no man can be punished for his thought: that is, if it proceeds no further;' for then it is known to none but God.

§ 9. Upon this account we find sometimes in laws commands expressly enjoining the internal action. Thus when the council of Lateran[r] had complained of some clerks and prelates that either

[h] [cap. 7.]

[i] [Excerpt., lib. iv. controv. 7. tom. iii. p. 454. Cf. Platon. de leg., lib. ix. § 14. tom. viii. p. 449.—τὴν δὲ οὐ παντάπασι κακὴν τύχην κ.τ.λ.]

[k] [Diog. Laert. in vit. Periandr., lib. i. cap. 7. § 4.]

[l] [Sext. decret., lib. v. tit. 4. cap. 1. col. 586 D.]

[m] [Cod. Justin., lib. ix. tit. 8. l. 5. col. 792.]

[n] [Sext. decret., lib. v. tit. 3. cap. 1. col. 584 B.]

[o] [Digest., lib. l. tit. 16. l. 225. col. 1846.]

[p] [ibid., lib. xlviii. tit. 9. l. 15. col. 1699.]

[q] L. 18. ff. de pœnis. [digest., lib. xlviii. tit. 19. l. 18. col. 1733.] l. 'Fugitivus,' ff. de verbor. signific. [ubi supra.]

[r] [Concil. Lat. iv. can. 17. tom. viii. col. 34 D.]

wholly omitted their office, or said it negligently, it adds, *Hæc et similia sub pœna suspensionis penitus inhibemus; districte præcipientes in virtute obedientiæ, ut divinum officium nocturnum pariter et diurnum, quantum eis dederit Deus, studiose celebrent pariter et devote:* viz., 'that they say their office diligently and devoutly;' which because it is an act of the heart as well as of the outward man, it gives a clear evidence in this enquiry. But above all is that novel of Justinian[s] which the late Greek books have brought to light, it never having been noted by the Latin interpreters, in which the emperor commanded that insolvent debtors, who by misfortune not by their crimes were made poor, if they swore their insufficiency, were to be freed from all further trouble; and the creditors that refused to obey the edict should pay ten pound of gold; and διὰ μόνην ἐνθύμησιν, 'for their mere thought' of doing otherwise should be put to death. I end this with the saying of the Jewish doctors, *Quicquid sapientes vetant palam fieri, etiam in penetralibus vetitum est,* 'whatever the wise men forbid to be done in public, the same must be understood to be forbidden in your closet;' it was the saying of Rabbi Bachai.

RULE VI.

HUMAN LAWS, BEFORE SUFFICIENT PROMULGATION, DO NOT OBLIGE THE CONSCIENCE.

§ 1. As the faults of subjects are not cognoscible without publication, so neither are the wills of princes. *Leges sacratissimæ quæ constringunt hominum vitas intelligi ab hominibus debent,* says the law, *l. 'Leges,' C. de legib. et constit.*[t] But in this there is no difficulty: all that is made is in the assignation of the sufficiency of the promulgation. A Spanish lawyer, Selva[u], and he alone, so far as I have heard or read, affirms the very solemn edition of it and declaration in the court or council to be sufficient. But as he speaks it wholly without reason, so he is to be rejected without further trouble. Others require one proclamation in one or more places, according to the greatness of the province or jurisdiction; but it can never be agreed positively how much is enough. Therefore so far as our consciences can be concerned in it, these following propositions are certain, and they are sufficient.

§ 2. 1) It is not necessary that laws in their promulgation be so

[s] Novell. cxxxv. [Authent. coll. ix. tit. 18.]

[t] [Cod. Justin., lib. i. tit. 14. l. 9. col. 81.] Vide etiam authent. 'Ut factæ novæ constit.' [Authent. coll. v. tit. 21. novell. 66.]

[u] De benefic., q. 22. n. 14. [apud Suarez, de leg., lib. iii. cap. 16. p. 152.]

divulged as that the notice of them reach every single subject. Not only because in most laws all persons are not concerned, but also because it is morally impossible; I mean in a great province, where the laws are commonly of greatest concern, and the promulgation more to be regarded and more diligently endeavoured. For laws of men are not like the sun, searching into all corners; but as the law itself is such as regards that thing which happens most commonly, so the promulgation is of a symbolical nature, and can arrive but to most persons.

§ 3. 2) In all princely and sweet governments[v] there must be such a publication of laws as must be fit to minister to the public necessity and the public duty, that the laws be no snares, but piously intended, prudently conducted, sufficiently communicated, and reasonably exacted with abatement of all those deficiencies which are incident and unavoidable to mankind; so that if what be in council judged sufficient for promulgation do not prove so in the event of things and in the province, the defect be put upon the insufficient publication, not upon the account of disobedience.

§ 4. 3) Be the publication legally sufficient or not sufficient, it is certain that the conscience is not tied by the law till it be known. I do not say but that the prevarication may be justly punished, because the law may be published as well as is morally possible, or prudently and civilly is required, and yet some may inculpably be ignorant of it. But be it so or otherwise, it is impossible that they who know not of it can obey; and if they cannot, they cannot be obliged: for that is no law, but madness, which obliges a man to that which is impossible.

§ 5. 4) The care and sufficiency of publication is wholly incumbent upon the lawgiver, not at all upon the subject; that is, the subject is not bound to seek after the law, but only to see that he do not turn his ear from it, or studiously decline it, or endeavour to be ignorant. For a law, though it be for good to the public, yet to the particular being a restraint upon our natural or political liberty respectively, no man is bound to seek his own fetters, or put the burden upon his own neck, but to wear it well when it is imposed: but to refuse to hear is the first act of disobedience, but to hear is the first instance of obeying; therefore till he hath heard, he is obliged to nothing. This hath no limitation or exception but this: if the subject hath heard there is a law, he is bound to enquire after it, for then it is sufficiently published; the lawgiver hath done his duty. But before he hath heard, it is to him as if it were not; and that which is not cannot be numbered, cannot be accounted for. The first is sufficient to oblige him, he is bound because he knows, the will of the lawgiver hath bound him; but then he must enquire for his own sake, for otherwise he cannot perform his obligation.

§ 6. 5) Although as to conscience the former measures are cer-

[v] ['government,' B, C, D.]

tain, yet the legislator hath power to declare when the promulgation is sufficient for the nullifying of all contracts intervening, or evacuating privileges, and changing all exterior events of law; because the being of all these depends upon the will of the prince and of his law. Only when this is reduced to practice, in the matter of contracts, if they were valid by the law of nature, he that did contract is obliged to stand to it, if the other requires it; but if it be his own advantage he is bound to quit it, if the other recedes and makes use of his advantage. For the law can tie him to suffer inconvenience for the public interest, but not to do any evil. Thus if Titius contract with Mævius to carry twenty ton of wheat from Sicily to Rome, and before the contract a prohibition of such contracts was legally published, and yet he heard not of it, he is bound to obey it: but if Mævius, who is like to be the gainer, stand upon his right of justice and natural consent, Titius must make him amends; but he must not transport the corn. But this is in case they be not both subjects of the same prince. And the reason of this is plain, because the stranger hath a natural right by justice and stipulation, but the subject hath a law upon him; therefore the other is not tied to quit that, but the subject must obey this: not to do an injury, for no law can oblige him to that; but to suffer one that is tolerable and is outweighed by the public advantage. But if they be both the subjects of the same law, the law that forbids one to make the contract, does also by implication forbid the other to exact that which is illegal. So that although the law cannot disoblige Titius from verifying a contract that is valid in the law of nature; yet Mævius can remit his right, and the law can tie him to that.

§ 7. This holds in all things where the parties can give consent to the invalidating of the contract. But sometimes they cannot, and then the rule of conscience is, *standum est juri naturali*, whatever was ratified by nature and religion must remain for ever. The council of Trent makes a law that all clandestine marriages shall be null[x]; she publishes the law, and declares it from a certain time to be valid. A poor vinedresser in the Valtoline hears nothing of it, but gets the daughter of his master the farmer with child after contract *per verba de præsenti*. The law is urged upon him, the parties are both threatened, and are in that fright willing to recede. But they were told by a prudent confessor that they could not consent to any such separation; and he told them truly. For in marriage there is a necessitude contracted by a law of nature, and not only a mutual right transmitted to each other, but there is a band of religion, a sacramental tie, or relation that God hath joined, and no man can put asunder. But until the contract is passed so far as that it is become a marriage in the law and state of nature, the prohibition ought to prevail upon them.

§ 8. Lastly, in privileges there is no difficulty, because the law is

[x] [Sess. xxiv. cap. 1. tom. x. col. 150. Cf. vol. ix. pp. 306, 20.]

not bound to give any at all; and therefore may restrain them at any time, without giving a reason. Thus if a law were made that all illegitimate children that were born after the death of the emperor Maximilian should be uncapable of a prebend or benefice in a church; he that heard not of the law might justly be put out after solemn investiture. For no man is injured because he hath not a favour done him.

RULE VII.

THAT A LAW SHOULD OBLIGE THE CONSCIENCE DOES NOT DEPEND UPON THE ACCEPTATION OF THE LAW BY THE PEOPLE.

§ 1. THIS rule hath suffered great prejudice, not only by the contrary opinion of the civilians and canonists, who in very great numbers oppose it, but by all persons almost who live under governments democratical, or do not well consider the powers and consequents of government. But the case in short is this;

§ 2. All governments in the world did either begin right or wrong. If right, it was by divine appointment, or by the multiplication of the posterity of a patriarch, and the αὔξησις, 'increase' of paternal government. This is the natural way, and this is founded upon natural reason, and a divine commandment. This hath in it no evil, and no question, and it is the just beginning of monarchy, it produces no other government.

§ 3. But if the government comes not this way, it comes in wrong. Either from tumults, by necessity and evil experience being forced to permit and establish an order and government; or directly by war and violence; or else in the destitution of a governor, when all are left to themselves, and none hath power over them, they may do what they list, and order things as they please, and part with as much power as they think fit, and keep some to themselves, and confound all politic principles, and divide power, as two earnest disputants do divide the truth when they have torn her in pieces, each part running away with that share that comes next his hand.

§ 4. Now from these beginnings of governments several republics and principalities have been established; and when it happened that any famous government entered the wrong way, they became exemplary to others in their polity and in their principles, and made their actions become rules to others. Thus it was that the Roman people, keeping the legislative power in their own hands, made kings and consuls and officers at their pleasure, but their consent was always demanded when a law was to be made, as is affirmed by Asconius

Pedianus *in orationem pro C. Cornelio*[y], and by Budæus[z] and Zasius *in l. 2. ff. de origine juris*[a]. These laws were made in a convocation of the people in thirty courts, and were called *curiatæ*, as is affirmed by Suetonius *in Augusto*[b], and in Cicero in his epistles to Lentulus: they were also called *populares* by Cicero in his orations. Now this people so largely reigning over the world, and being exemplary by their wisdom and their laws, did easily transmit this licence unto the people of most nations, who needed but little teaching to bridle the power of their princes, to which they were but too much tempted by that *libido regnandi*, that lust of empire which possesses the greatest part of the world; and by their own strength, which they often made their kings to feel, and would not lend to them in their needs but upon hard conditions. Add to all this, that many princes have been gentle and kind, and many wise, and would not put a bridle upon such an untamed beast without their own consent; not only that they might obey more willingly, but lest they should not obey at all, as knowing it to be better that they should be ruled as they please, than not at all.

——— Libertatis servaveris umbram
Si quicquid jubeare velis[c]; ———

This fantastic liberty the people would seldom be without; and they must have what they were resolved on; for when they please they are all kings.

§ 5. Upon the account of these and some other causes it is come to pass that in many places laws have their binding power only by the consent of the people; in their tribes and courts, or by their representatives, or by their manners and customs: and from hence come these sayings of some very wise men; *Lex nullam vim obligandi habet nisi ex more*, so Aristotle[d]; and *Leges promulgatione constitui, firmari autem usu*, says Gratian[e]: and the civil law most expressly[f], *Ipsæ leges nulla alia ex causa nos tenent quam quod judicio populi receptæ sunt*, 'the reception and approbation of the people is the only firmament and sanction of the law.' Now that the civil law says it, it was *ex more Romanorum*, 'among the old Romans it always was so:' and Aristotle speaks at the rate of him who had been bred under the popular government of the Greeks, and therefore it is no wonder that any of them speaks so: but as for the words of Gratian, Laurentius and the archdeacon[g] expound them to mean that the laws receive from the use of the people *firmitatem stabilitatis, non auctoritatis;* that is, *de facto* they are made more

[y] [p. 57. ed. 8vo. Sen. 1522.]
[z] [In pandect., p. 41. fol. Par. 1543.]
[a] [In pandect., tit. ii. c. 2. § 1. op., tom. i. p. 115.]
[b] [cap. 65.]
[c] [vid. Lucan., lib. iii. 146.]
[d] Lib. ii. polit., cap. 8. [tom. ii. p. 1269.]
[e] [Rubric. in] § 'Leges.' dist. iv. [decret., part. 1. cap. 3. col. 11.]
[f] l. 'De quibus,' ff. de legibus. [digest., lib. i. tit. 3. l. 32. col. 12.]
[g] [Guidonis de Baiiso, archidiaconi Bononiensis, Rosarium super decreta, dist. iv. ed. fol. s. p. Tridini, circa 1490.]

firm and lasting by the consent and manners of the people, but not *de jure* more obliging; according to that of Tertullian[h], *Neque civis fideliter legi obsequitur ignorans quale sit quod ulciscitur lex. Nulla lex sibi soli conscientiam justitiæ suæ debet,-sed eis a quibus obsequium expectat: cæterum suspecta lex est quæ probari se non vult; improba autem si non probata dominetur:* 'a citizen does not faithfully obey that law (meaning of going to war) who knows not what that is which is to be punished; for that a law is just is owing in part to him that is to obey it: that law is to be suspected which will not endure a trial; but if being tried it be rejected, it cannot prevail without injustice.'

§ 6. Having now by this narrative laid open the secret and foundation of this opinion, and prevented the objections that can be made, the rule is certain and easy. The consent of the people gives no authority to the law; and therefore is no way necessary to the sanction and constitution, save only to prevent violence, rebellion, and disobedience. But because I am not writing rules of policy, but rules of conscience, I am to say, that if the legislative power be in the prince, that is, if he be supreme, he is to decree the law; but wherever the authority be, that authority is derived from God, and is only less than Him: and although a horse sometime cannot be ruled without strokings, and meet[i], and gentle usages, yet for all that his rider is his master: and he that said, "Obey them that have the rule over you[j]," and "Submit yourselves to every ordinance of man for the Lord's sake, whether to the king as to the supreme[k]," &c., did not appoint the supreme to rule by a precarious power; and if he who hath authority makes a just law, either the people are bound to accept the law, or they despise the authority. And indeed it is a contradiction in the terms, that a law be imposed and yet that it be no law of itself; that is, that the effect of the cause should be a necessary condition in the cause itself; and that its own work is nothing, unless what it does work give it force. It must be a law before they accept it, and if it be a law they are bound to accept it; and therefore their accepting cannot make it a law.

§ 7. In popular governments the people have their suffrages in the legislative, but then it is because they govern; but when they have not the legislative he that hath it must not ask them leave to use it, when God hath given him power. They indeed who suppose kings to be trustees and ministers of the people have some pretence (if they supposed true) to affirm the acceptation of the people to be necessary. But yet if they did suppose true, it were indeed a pretence but no more. For when the king is chosen, and is by the people (that I may use the expression of Tiberius) *tanta tamque libera potestate instructus*[l], invested with a princely power, and the legislative; he, by himself or by his senate, according to the constitution of the pro-

[h] Apolog. cap. iv. [p. 6 B.]
[i] ['meat' A, B.]
[j] [Heb. xiii. 17.]
[k] [1 Pet. ii. 13.]
[l] [Sueton. ubi supra, p. 41.]

vince, is to make the law, and to punish them that break it, and not to ask them if they will please to obey it. *Lex instituitur cum promulgatur*, says the authentic[m]: and therefore whosoever does not obey, whether it be a single person or a multitude, they sin against God; it is disobedience in a single person, and rebellion in the multitude. All which is true with the provisos of the former rules, that the laws be upon all their just accounts in all other things obligatory.

§ 8. This rule does also fail in all arbitrary conventions and precarious governments: in such which have no coercitive power but what is by voluntary concession, such which can convene and dissolve at pleasure, as colleges and fraternities. For as they meet at pleasure, so they must be governed as they please; their power comes not from God, but from man; and their authority is equivocal.

§ 9. Some insert one case here, saying that if a law be refused by the greater part of the people, then single persons are excused, because it is to be supposed that the prince cares not that single persons observe the law, since so little will serve no interest. But if this were true, yet there is in it so much caution to be used, so many provisos, and so much probability to the contrary, that it were as good that it were not true; for it cannot give rest or peace to the conscience. For α) whether the prince do secretly give leave or no is a presumption of infinite uncertainty. β) The contrary may very well be supposed, for he that is troubled at the rebellion of many will not give leave to one to disobey. γ) If these few single persons do submit, they become good examples, and are confessors for the reputation of the king's wisdom and authority. δ) What is evil in the whole is so in every particular; because the people is but an aggregate body of single persons. ε) We must not 'follow a multitude to do evil[n];' and all 'rebellion' is of that nature, that it is 'as the sin of witchcraft[o];' and who would be a witch because all the country is so? ζ) He that partakes of other men's sins shall also partake of their punishment.—Upon these accounts I judge it very unsafe for any single person to resist a just law of a just superior, upon hope of escaping in the crowd. But this rule is only true when the law is just and good for public profit and usefulness of the people[p]. For if it be an unreasonable law, it binds not as a law, but as by promise and contract; that is, it does not bind by the sanction of the law, but the acceptation of the people. And so the ancient lawyers are to be understood; *Lex præcepti tollitur, si moribus utentium non recipitur*[q], 'the obligation of the law is taken off, unless it be received into the manners of the subjects.' But the instance

[m] [Gratian. ubi supra.]
[n] [Exod. xxiii. 2.]
[o] [1 Sam. xv. 23.]
[p] Rule iii. [p. 38.]
[q] Panormit. c. 'Cum olim.' de cleric. conjug. [in decret., lib. iii. tit. 3. cap. 6. § 4. tom. iii. fol. 16. ed. fol. Lugd. 1516.]

tells in what sense this is true. The pope and council cannot command continence to a certain sort of persons after promotion against their wills; *quia continentia est res quæ potest persuaderi, imperari autem non,* 'because continence is a thing that may be persuaded, but not commanded.' The matter of the law is to be ordered according to the measures of the third rule; but supposing that, this rule is certain.

RULE VIII.

HUMAN LAWS OF INDIFFERENT MATTER DO NOT OBLIGE THE CONSCIENCE OF THE SUBJECTS OUT OF THE DOMINIONS OF THE SUPERIOR.

§ 1. *Extra territorium jus dicenti non paretur impune,* is a famous saying in the canon law[r], 'a man may safely disobey the law of his prelate if he be out of the diocese.' And the reason is, because beyond his diocese he hath no jurisdiction; and beyond his jurisdiction a prince hath no power. *Lex est jus proprium civitatis,* saith the law[s]; 'the law hath no power beyond its own city.' Thus anciently in the province of Canterbury the people did not fast upon S. Mark's day; but if they were within the province of York they were tied to the common law or custom of the church besides. Thus also it is in maritime places, especially in places of public trade and merchandise; if the several subjects should keep the several laws of their own princes, it would cause great confusion and disorder upon the place of trade; and since it is certain that strangers must live by the laws of the country where they sojourn, it is certain they are not tied to the laws of their own, because they may be contrary.

§ 2. But this hath divers limitations. For,

1) It does not hold in the substantial matters of religion where the religions of the country differ. It is not lawful for a subject of England to go to mass in a foreign country; not only upon supposition that the office is suspicious or to be blamed by the measures of the divine law, but if the laws of our country have upon other prudent and just considerations forbidden it. The sons of the church of England professing under the government episcopal may not lawfully communicate in the Huguenot churches with them that believe episcopacy to be antichristian or unlawful, because this does relate to the evil and detriment of those laws, and that government and that authority under which we still are tied. But in the ceremonial and ritual part of religion, where the religion is the same, we are not

[r] Cap. 2. de constitut. [Sext. decret., lib. i. tit. 2. cap. 2. col. 14.]

[s] L. 'Omnes populi,' de justitia et jure. [digest., lib. i. tit. 1. l. 9. col. 3.]

tied abroad to our country customs. A subject of the church of England may stand at the holy communion, or eat it in leavened bread, if he come into protestant countries that have any such custom: and the reason of this is because the contrary would give scandal, to which our own laws neither do nor can oblige abroad; and if any be offended at our different ceremonies at home, he must look to it, we are not concerned in any thing but to obey our superior, and quietly to render a reason to our brethren.

§ 3. 2) This rule does not hold in such laws which are the specification of the divine laws. Thus if a subject of England should be in Spain, and there see his daughter dishonoured, or his wife consent to her shame, and take her in adultery; he may not kill her, though in Spain it be lawful for them to do it. The reason is, because she is not a subject of Spain, but hath an habitual relation to England, and therefore it is murder if it be done by an English subject. Concerning all his own subjects, the prince of the country and the legislative is to give limits to the indefinite laws of God; and the reason is that which S. Paul[t] gives, because he who hath 'the rule over them' is to 'give an account' of their souls. Every law therefore is to acquit or condemn her own subjects: and therefore if a Spaniard does dishonour the bed of an English subject in Spain, it is lawful there to kill him: because his own prince's law condemns him, and gives leave to the injured person to be executioner. All these particulars rely upon the same reason.

§ 4. 3) This rule does not hold, when though the subject be abroad, yet the action does relate to his own country. Thus it is not lawful abroad to coin or counterfeit the money of his country, to rail upon his prince, to prejudice his subjects, to violate his honour, to disgrace his nation, to betray the secrets and discover the counsels of his prince. Because the evil done out of the territory being an injury to them within, is as if it were done within. When the dispute was between the Athenians and Thebans about their confines, and the parties stood at a little distance, disputing and wrangling about the breadth of an acre of ground, Timotheus shoots an arrow and kills a young Theban gentleman. The Thebans demand that Timotheus be put to death by the laws of Athens, as being their subject: they refuse to do so, but deliver Timotheus to the Thebans, giving this reason—he shot the arrow within the Athenian limit, but it did the mischief within the territory of Thebes; and where the evil is done, there and by them let the criminal be punished. Being abroad is no excuse in this case. If a subject shoots an arrow into his own country, though he bent his bow abroad, at home he shall find the string.

§ 5. 4) If the action be something to be done at home, the subject abroad is bound to obey the summons of the law. When Henry the second of England commanded all prelates and curates to reside

[t] [Heb. xiii. 17.]

upon their dioceses and charges, Thomas Becket of Canterbury was bound in conscience, though he was in France, to repair to his province at home. The sum of all is this, a law does not oblige beyond the proper territory unless it relate to the good or evil of it. For then it is done at home to all real events of nature, and to all intents and purposes of law. For if the law be affirmative, commanding something to be done at home, at home this omission is a sin: *Qui non facit quod facere debet, videtur facere adversus ea, quia non facit,* saith the law[u]; the omission is a sin there where the action ought to have been done. But if the law be negative, *Qui facit quod facere non debet, non videtur facere id quod facere jussus est,* he that does what he is forbidden to do is answerable to him who hath power to command him to do it.

§ 6. This rule thus explicated is firm; and is to be extended to exempt or privileged places, according to that saying of the lawyers, *Locus exemptus habetur pro extraneo,* 'he that lives in an exempt place, lives abroad.'

§ 7. By the proportions of this rule it is easy to answer concerning strangers, whether they be bound by the laws of the nation where they pass or traffic. For in all things where they are not obliged by their own prince, they are by the stranger, and that upon the same account; for if they who are abroad are not ordinarily bound by the laws of their country (except in the cases limited) it is because the jurisdiction and dominion of their prince goes not beyond his own land; and in such cases the place is more than the person: but therefore it must go so far, and be the person what he will, yet in the territory he is under the law of that prince. He is made so by that place. It is *lex terræ,* the law of the land in which he is: and in the peace of that he shall have peace, as God said to the Jews[v] concerning the land of their captivity.

RULE IX.

OBEDIENCE TO LAWS IS TO BE PAID ACCORDING TO WHAT IS COMMANDED, NOT ACCORDING TO WHAT IS BEST.

§ 1. WHEN Lacon was fighting prosperously, and had prevailed very far upon his enemies, it happened that a retreat was sounded just as he was lifting up his hand to smite a considerable person; he turned his blow aside and went away, giving this reason to him

[u] L. 'Qui non facit,' ff. de regulis juris. [digest., lib. l. tit. 17. l. 121. col. 1864.]

[v] [Jer. xxix. 7.]

that asked him why, It is better to obey than to kill an enemy. But when Crassus[w] the Roman general sent to Athens to an engineer a command to send him such a piece of timber towards the making of a battery, he sent him one which he supposed was better; but his general caused him to be scourged for his diligence: and Torquatus Manlius[x] being consul commanded his son not to fight that day with the enemy, but he espying a great advantage fought and beat him and won a glorious victory, for which he was crowned with a triumphant laurel, but for his disobedience lost his head. It is not good to be wiser than the laws; and sometimes we understand not the secret reason of the prince's command, or the obedience may be better than a good turn, or a better counsel; which is very often ill taken, unless it be required. *Corrumpi atque dissolvi officium omne imperantis ratus si quis ad id quod facere jussus est, non obsequio debito, sed consilio non desiderato respondeat,* said Crassus in A. Gellius[y].

§ 2. Thus also it is in the observation of the divine commandments: when God hath declared His will, and limited our duty to circumstances and particulars, He will not be answered by doing that which we suppose is better. We must not be running after sermons when we should be labouring to provide meat for our family: for besides that it is direct disobedience in the case now put, there is also an error in the whole affair; for that which we think is better than the commandment is not better: and this God declared in the case of Saul, 'Obedience is better than sacrifice[z].' No work is better than that which God appoints.

§ 3. This is to be understood so that it is not only left to our liberty, but it is also rewardable for the subject to prevent a commandment, and to excel the measures of the law in the matter of a commandment, when to do so we know will be accepted, and is to the pleasure and use of the prince. Thus Astyages[a] preferred Chrysantas before Hystaspes, because he did not only obey as Hystaspes did, but understood the mind of the prince, and when he knew what would please him, did it of his own accord. But then this is upon the same account; it is obedience, only it is early and it is forward.

§ 4. This also is to be added, that if the choice of the subject differing from the command of the prince be very prosperous and of great benefit, the prince does commonly *ex post facto* allow the deed; that is, he does not punish it. P. Crassus Mutius and T. Manlius did otherwise; but they were severe and great examples. But when it is not punished, it is not because it does not deserve it, but because it is pardoned: for if it should miscarry, it would not escape vengeance: and therefore though the prosperous event be loved, yet it came in at a wrong door, and the disobedience was

[w] Vide A. Gellium, lib. i. [cap. 13.]
[x] [Liv., lib. viii. cap. 7.]
[y] [ibid.]
[z] [1 Sam. xv. 22.]
[a] [Xen. Cyrop., lib. viii. cap. 4. § 11.]

criminal. Δεσπότου μέν ἐστι μόνον τὸ ἐπιτάττειν, δούλων τὸ πείθεσθαι, 'masters are to command, but the province of servants is to obey,' saith S. Chrysostom.

§ 5. This rule is to be understood according to the intention, not according to the letter of the law; for if the intention of it be that which is better, it is evident that is to be done which is better in the intention, not that which is commanded in the letter. But of this in the chapter of interpretation of laws.

CHAP. II.

OF LAWS PENAL AND TRIBUTARY.

RULE I.

IT IS LAWFUL FOR CHRISTIAN MAGISTRATES TO MAKE PENAL LAWS, NOT ONLY PECUNIARY AND OF RESTRAINT, BUT OF LOSS OF MEMBER AND LIFE ITSELF.

§ 1. WHATSOEVER is necessary is just; that is, that must be done which cannot be avoided: and therefore the power of the magistrate in punishing the transgressors of their laws of peace, and order, and interest, is infinitely just[a]; for without a coercitive power there can be no government, and without government there can be no communities of men; a herd of wolves is quieter and more at one than so many men, unless they all had one reason in them or have one power over them. *Ancus rex primus carcerem in Romano foro ædificavit, ad terrorem increscentis audaciæ*, says Livy[b]; 'king Ancus seeing impiety grow bold, did erect a prison in the public markets.' When iniquity was like to grow great, then that was grown necessary. And it is observed that the Macedonians call death δάνος[c], from the Hebrew word *dan*, which signifies a judge, as intimating that judges are appointed to give sentences upon criminals in life and death. And therefore God takes upon Himself the title of a king and a judge, of a lord and governor[d]; and gives to kings and judges the title of 'gods[e],' and to bishops and priests the style of 'angels[f].'

[a] Nemo sibi putabit turpe quod aliis fuit fructuosum.—Patercul., lib. ii. in princ. [cap. 3.]

[b] [lib. i. cap. 33.]

[c] [Plut. de audiend. poet., tom. vi. p. 78.]

[d] [1 Chron. xxix. 12; 1 Tim. vi. 15.]

[e] [Ps. lxxxii. 6.]

[f] [Rev. ii. 1, 8, 12, 18; iii. 1, 7, 14.]

§ 2. But here I will suppose that magistracy is an ordinance of God, having so many plain scriptures for it; and it being by S. Paul affirmed that "he beareth not the sword in vain," and that they who have done evil ought to fear; and of himself he professed that 'if he had done aught worthy of death he did not refuse to die[h];' and a caution given by S. Peter[i], that Christians should take care that 'they do not suffer as malefactors:' and it being made a note of heretics, that they are 'traitors,' that they are 'murmurers,' that they 'despise dominion,' that they 'speak evil of dignities[j];' and that we are commanded to 'pray for kings and all that are in authority[k],' for this reason, because they are the appointed means that men should live a peaceable and a godly life; for piety, and peace, and plenty too depend upon good governments: and therefore Apollo Pythius[l] told the Lacedæmonian embassadors that if they would not call home Plistonax their king from banishment, and restore him to his right, they should be forced to till their ground with a silver plough; that is, they should have scarcity of corn in their own cities, and be forced to buy their grain to relieve the famine of their country: for so the event did expound the oracle; they grew poor and starved because they unjustly suffered their king to live in exile. Add to these, that we are often commanded to 'obey them that have the rule over us[m];' to 'be subject to every ordinance of man[n];' that 'rulers are not a terror to good works, but to the evil[o],' and many more to equal purposes.

§ 3. Neither ought the precept of charity and forgiveness, which Christ so often, so earnestly, so severely presses, evacuate the power of princes. For the precept of forgiving offenders does not hinder parents from correcting their offending children, nor masters from chastising their rebellious servants, nor the church from excommunicating them that walk disorderly: these things rely upon plain scriptures, and upon necessity and experience; and they do evince thus much without any further dispute, that some punishment may stand with the precept of forgiveness; or at least, if he who is injured may not punish without breach of charity, yet some one else may. And if it be permitted to the power of man to punish a criminal without breach of charity, the power of the magistrate must be without all question; and that such a power can consist with charity there is no doubt, when we remember that the apostles themselves and the primitive churches did deliver great criminals over to the power of Satan to be 'buffeted, even to the destruction of the flesh, that their souls might be saved in the day of the Lord[p].' S. Paul delivered Elymas to blindness[q], and S. Peter gave Ananias and Sapphira to a corporal death[r].

g [Rom. xiii. 4.]
h [Acts xxv. 11.]
i [1 Pet. iv. 15.]
j [2 Pet. ii. 10.]
k [1 Tim. ii. 2.]
l [Thucyd., lib. v. cap. 16.]
m [Heb. xiii. 17.]
n [1 Pet. ii. 13.]
o [Rom. xiii. 3.]
p [1 Cor. v. 5.]
q [Acts xiii. 11.]
r [Acts v. 1—10.]

§ 4. But the great case of conscience is this. Although all punishments less than death may like paternal corrections consist with charity (for they may be disciplines and emendations), yet in death there is no amendment; and therefore to put a man to death *flagrante crimine*, before he hath mortified his sin or made amends for it, that is, before it is pardoned, and consequently to send him to hell, is the most against charity in the world, and therefore no man hath power to do it: for God never gave to any man a power to dispense justice to the breach of charity; and that dispensation which sends a man to hell is not for edification but for destruction.

§ 5. To this I answer,

1) That it is true that whatsoever is against charity is not the effect of justice; for both of them are but imitations and transcripts of the divine attributes and perfections, which cannot be contrary to each other. But when the faults and disorders of mankind have entangled their own and the public affairs, they may make that necessary to them which in the first order and intention of things was not to be endured. Thus we cut off a leg and an arm to save the whole body; and the public magistrate, who is appointed to defend every man's rights, must pull an honest man's house to the ground to save a town or a street: and peace is so dear, so good, that for the confirming and perpetuity of it he may commence a war which were otherwise intolerable. If therefore any evil comes by such ministries of justice, they who introduced the necessity must thank themselves. For it is necessary it should be so, though it be but a suppositive and introduced necessity; only he that introduced it is the cause of the evil, not he that is to give the best remedy that he hath.

§ 6. 2) No man is to answer for an accidental effect that is consequent to his duty. *In omni dispositione attenditur quod principaliter agitur*, says the law[8], *l.* '*Si quis nec causam*,' *ff. Si certum petatur*. I am to look to what is principally designed, not what accidentally can happen. If I obey God, it is no matter who is offended. If I see that my neighbour will envy me for doing good, and his eye will be evil because I am good, I am not to omit the good for fear his soul perish, when my good is rather apt to do him good than evil: he is to answer for it, not I; for nothing that I do makes him evil, he makes himself so by his own choice. There are many men that turn the grace of God into wantonness, and abuse the long-suffering and patience of God, and turn that into occasions of sin which God meant for the opportunities and endearments of repentance; but if God should leave to be gracious to mankind in the same method, out of charity and compliance with the interest of the souls of such miserable persons, as they would be never the better, so the other parts of mankind would be infinitely the worse.

[8] [Digest., lib. xii. tit. 1. l. 4.]

§ 7. 3) It is true that charity is the duty of every Christian; but as all Christians are not to express it in the same manner, so there are some expressions of charity which may become some persons, and yet be the breach of another's duty: and some may become our wishes which can never be reduced to act; and because that is all we can do, it is all we are obliged to do. When Vertagus was condemned to die for killing the brother of Aruntius Priscus, the poor father of the condemned man came and begged for the life of his miserable son; but Priscus out of the love of his murdered brother begged with the same importunity that he might not escape; and both their effects were the effects of charity. The charity of a prelate and a minister of religion is another thing than the charity of a prince. A mother signifies her love one way and a father another; she by fondness and tender usages, he by severe counsels and wise education; and when the minister of religion takes care concerning the soul of the poor condemned man, the prince takes care that he shall do no more mischief, and increase his sad account with God. The prince and the prelate are both of them curates of souls and ministers of godliness; but the prince ministers by punishing the evil doer and rewarding the virtuous, and the prelate by exhortation and doctrine, by reproof and by prayer, by sacraments and discipline, by the key of power and the key of knowledge. The effect of this consideration is this; that the magistrate by doing justice in the present case does not do against charity, because he does minister to charity in the capacity and proper obligation of a magistrate, when he does his own work; which being ordained for good and not for evil, the office is then most charitable and most proper for him, when he ministers to charity in his own way that God hath appointed him. By his justice he ministers to the public good, and that is his office of charity. That is his work; let others look to their share.

§ 8. 4) The cutting off of a malefactor is some charity to his person, though a sad one; for besides that it prevents many evils, and forces him to a speedy recollection, and a summary repentance, and intense acts of virtue, by doubling his necessity; it does also cause him to make amends to the law; and that oftentimes stands him in great stead before the tribunal of God's justice:

Paullum supplicii satis est patri[t],

'God is sometimes pleased to accept of a small punishment for a great offence;' and His anger many times goes not beyond a temporal death[u], and the cutting off some years of his life.

§ 9. 5) That which concerns the magistrate is, that he be just, and charitable too. Justice of itself is never against charity; but some actions of supposed charity may be against justice. Therefore the magistrate in that capacity is tied to no charity but the charity of justice, the mercies of the law; that is, that he abate of the rigour

[t] [Ter. Andr. v. 3. 32.]

[u] [cf. vol. ii. p. 585, and iv. 670.]

as much as he can, that he make provisions for the soul of the criminal such as are fit for his need; that if he can delay, he do not precipitate executions. In what is more, the supreme, the lawgiver is to take care, and to give as much leave to the ministers of justice as can consist with the public interest. For here it is that there is use of that proposition, that all men are not tied to all the exterior kinds and expressions of charity, but as they are determined accidentally. It will not be supposed that the judge is uncharitable if he do not preach to the condemned criminal; or if he do not give him money after sentence, or visit him in prison, or go to pray with him at the block; these are not the portions of his duty: but as his justice requires him to condemn him, so his charity exacts of him as judge nothing but the mercies of the law.

§ 10. 6) That which is necessary to be done is not against any man's duty, or any precept of christianity. Now that some sorts of persons should be put to death is so necessary, that if it were not done it would be certainly directly and immediately a very great uncharitableness; and the magistrate should even in this instance be more uncharitable than he can be supposed to be in putting the criminal to death. For a highway thief and murderer, if he be permitted, does cut off many persons who little think of death; and such as are innocent as to the commonwealth are yet very guilty before God: for whose souls and the space of whose repentance there is but very ill provision made, if they may live who shall send many souls to hell, by murdering such persons who did not watch and stand in readiness against the sad day of their sudden arrest. If all such persons were to be free from afflictive punishments, the commonwealth would be no society of peace, but a direct state of war, a state most contrary to governments; but if there were any other less than death, the galleys and the mines and the prisons would be nothing but nurseries of villains, which by their numbers would grow as dangerous as a herd of wolves and lions: and if ever they should break into a war, like Spartacus and his rabble, who knows how many souls should be sent to hell for want of time to finish their repentance?

§ 11. 7) If the condemned criminal had never any time to repent, if he had never thrown away any opportunities of salvation, he had never come to that pass; and if he have, who is bound to give him as much as he will need? And if it be unlawful for a magistrate to put a criminal to death that hath not sufficiently repented, then no villain shall ever die by the public hand of justice; and the worse the man is, the longer he shall live, and the better he shall escape: for in this case, if he resolves privately that he never will repent, he hath blunted the edge of the sword, and weakened the arm of justice for ever that she shall never strike.

§ 12. 8) God hath given a commission to magistrates which they must not prevaricate: if therefore a criminal falls under the rods and axes of the consuls, who are God's ministers for good to them

that do well, and for evil to them that do evil; it is not the magistrate who is to be blamed, but the hand of God that is to be revered, who by this hand cuts him off, and it may be therefore thus cuts him off because He will give him no longer time. However the magistrate is to look to his rule, not to rare and accidental events; which are only in the power of the divine providence and in the will of the man to prevent.

§ 13. 9) No man can say that a condemned criminal that makes the best use of his time after sentence, or after his just fears of it, or after the apprehension of the probabilities of it, shall certainly be damned for want of more time. For as no man knows just how much time is necessary; so neither can he tell how deep the repentance of the man is, nor yet how soon God will return to mercy. Therefore upon so great uncertainties, and the presumption and confidences relying upon such a secret, to omit a certain duty is no way allowable. It is true there are amongst some wise and pious persons great fears in this case; but fear is very good when it is made use of to good purposes, to obstruct the course of sin, but not the course of justice. And some men fear in other cases very bad; which yet ought not to be made use of to preserve the lives of murderers. Some fear that all papists shall be damned, and some say that all protestants are in as bad condition; and yet he that thinks so would suppose the case too far extended if it might not be consistent with charity to put (for example's sake) the gunpowder traitors to death till they had changed their religion. Whatsoever we fear, we are to give our brethren warning of it while it is time for them to consider; but these doubtful disputes must not be used as artifices to evacuate the purposes and defensatives of laws. And since the magistrates cannot know what the sentence of God concerning such persons shall be, they may hope well as readily as ill, and then there is no pretence to arrest the sentence beyond the prudent and charitable periods of the law.

§ 14. 10) No change in government, no alteration of laws, no public sentences are to be made or altered upon the account of any secret counsel of God; but they are to proceed to issue upon the account of rules, and measures of choice, and upon that which is visible or proved, that which is seen and heard, that which God commands and public necessities require; for otherwise there can be no rule, no orderly proceedings, no use of wise discourses, but chance and fear and irregular contingencies must overrule all things.

§ 15. 11) The magistrate gives sentence against criminals for single acts, not for vicious habits: for concerning these he hath nothing to do, and if the criminal perish for these, it is only chargeable upon his own account. But if by the hand of justice he dies for a single act; the shorter time that is usually allowed to those that are appointed to die may be so sufficient that if the criminal make full use of it, his case is not so desperate as that the objection

can prevail: for if there be nothing else to hinder him, it may be very well; but if there be any thing else, that he and not the magistrate was first to have considered; for himself knew of it, the magistrate did not.

§ 16. 12) Every man that lives under government knows the conditions of it, those public laws and the manners of execution; and that he who is surprised in his sin by the magistrate, shall be cut off like him who by a sudden sickness falls into the hands of God. It is a sudden death which every man ought to have provided for; only in this case it is more certain and to be expected: and he that knows this to be his condition, if he will despise the danger when he falls into it, cannot complain of the justice of the law, but of his own folly which neglected life, and chose death and swift destruction[t].

§ 17. Though from these considerations it appears that the pretence of charity cannot evacuate that justice which hath given commission to all lawful magistrates, and warrant to all capital sentences, and authority to all just wars, in which it is more than probable many will be killed that are not very well prepared: yet this power of inflicting capital punishments must not be reduced to act in trifling instances; for the loss of a few shillings or for every disobedience to command it must not be done, but in the great and unavoidable necessities of the commonwealth. For every magistrate is also a man; and as he must not neglect the care and provisions of that, so neither the kindnesses and compassion of this. Nothing can make recompence for the life of a man, but the life of a better, or the lives of many, or a great good of the whole community. But when any of these is at stake, it is fit the innocent be secured by the condemnation of the criminal. And this was excellently disputed by Cicero[u] in his argument against Calenus upon this very question. *Hoc interest inter meam sententiam et tuam: ego nolo quenquam civem committere ut morte multandus sit; tu etiamsi commiserit, conservandum putas. In corpore si quid ejusmodi est quod reliquo corpori noceat, uri secarique patimur, ut membrorum aliquod potius quam totum corpus intereat: sic in reipublicæ corpore, ut totum salvum sit, quicquid est pestiferum amputetur. Dura vox: multo illa durior, Salvi sint improbi, deleantur innocentes, honesti, boni, tota respublica.* Cicero would have no citizen deserve to die; but Calenus would have none die though he did deserve it. But Cicero thought it reason that 'as in the body natural we cut off an arm to save the whole, so in the body politic we do the same, that nothing remain alive that will make the other die. It is a hard sentence, it is true; but this is a harder, Let the wicked be safe; and let the innocent, the good, the just men, the whole commonwealth be destroyed.'

[t] See the 'Doctrine and Practice of Repentance,' chap. v. sect. 5. [vol. vii. p. 193.]
[u] Philippic. viii. [cap. 5.]

§ 18. This we see is natural reason, but it is more than so; it is also a natural law, expressed and established by God himself. "He that sheddeth man's blood, (in man, or) by man[v], shall his blood be shed[x]:" which words are further explicated by the Chaldee paraphrast, *Qui effuderit sanguinem hominis cum testibus, juxta sententiam[y] judicum sanguis ejus fundetur;* 'he that sheds the blood of man, with witnesses, his blood shall be shed by the sentence of the judge.' For the majesty of the supreme prince or judge

——— justi
Vim terroris habet, procul an prope, præsto vel absens:
Semper terribilis, semper metuenda, suoque
Plena vigore manet, nullique impune premenda
Creditur, et semper cunctis, et ubique timetur.

said Guntherus[z] with greater truth than elegance: 'he hath the force of a just terror in all places, at all times, and upon all persons.' And in pursuance of this law all communities of men have comported themselves, as knowing themselves but ministers of the divine sentence; and that which is the voice of all the world is the voice of nature and the voice of God. The sum of these things I give in the words of S. Austin: *Non ipse occidit qui ministerium debet jubenti, sicut adminiculum gladius est utenti. Ideo nequaquam contra hoc præceptum fecerunt, quo dictum est, Non occides, qui Deo auctore bella gesserunt, aut personam gerentes publicæ potestatis, secundum ejus leges, hoc est, justissimæ rationis imperium, sceleratos morte puniverunt:* 'they who make just wars, and those public persons who according to the laws put malefactors to death, do not break the commandment which says, Thou shalt not kill. For as the sword is not guilty of murder which is the instrument of just executions, so neither is the man that is the minister of the judge, nor the judge who is the minister of God;' Θεοῦ διάκονος, ἔκδικος εἰς ὀργὴν, 'God's minister of revenge and anger:' and by fear to restrain the malice of evil men, and to prevent mischief to the good, is the purpose of authority and the end of laws. So Isidore[a], *Factæ sunt leges ut earum metu humana coerceatur audacia, tutaque sit inter improbos innocentia, et in ipsis improbis formidato supplicio refrænetur nocendi facultas.* Fear is the beginning of wisdom, and fear is the extinction and remedy of folly; and therefore the laws take care by the greatest fear, the fear of death, to prevent or suppress the greatest wickedness.

[v] [בְּאָדָם]

[x] [Gen. ix. 6.]

[y] ['per testes ex sententia,'—Walton, bibl. polyglott., tom. i. p. 35.]

[z] [Liguriuus, sive de reb. gest. Friderici I., lib. v. p. 347. lin. 55, inter scriptor. rer. German. Justi Reuberi, fol. Hanov. 1619.]

[a] Lib. iv. etymol., c. 20. [tom. iii. p. 198.] et habetur, dist. 4. can. 'Factæ sunt leges.' [Gratian. decret., dist. iv. cap. 1. col. 11.]

RULE II.

PENAL LAWS DO SOMETIMES OBLIGE THE GUILTY PERSON TO THE SUFFERING THE PUNISHMENT, EVEN BEFORE THE SENTENCE AND DECLARATION OF THE JUDGE.

§ 1. THAT this is true concerning divine laws is without peradventure: not only because the power of God is supreme, mere, absolute, and eternal, and consequently can oblige to what, and by what measure, and in what manner, and to what purposes He please; but also because we see it actually done in the laws and constitutions both mosaical and evangelical.

§ 2. He that strake out an eye or tooth from a servant was bound to give him his liberty[b]: that is, as his servant was a loser, so must he that caused it; the man lost his tooth, and the master lost the man; he gains his liberty that lost an eye. Now that this was to be done by the master himself without compulsion from the judge, is therefore more than probable, because God who intended remedy to the injured servant had not provided it if He left the matter to the judge, to whom the servant could have no recourse without his master please; and if he give him leave to go, it is all one as doing of it himself, for he that gives leave that himself be compelled, first chooses the thing, and calls in aid from abroad to secure the thing at home. But therefore God bound the conscience of the man, tying him under pain of His own displeasure that the remedy be given, and the penalty suffered and paid under the proper sentence of the obliged criminal.

§ 3. To the same purpose was that law made for him that lies with a woman in the days of her separation, 'he shall be unclean until the evening.' Now that this was not to be inflicted by the judge, but that the guilty person should himself be the executioner of the penalty, is therefore certain, because by another law concerning the same legal uncleanness it was decreed that the fact shall be capital, that is, if it come before the judge: of which I have already given account[c].

§ 4. Thus also God imposed upon him that eat of the holy things unwittingly the burden of paying the like, and a fifth part besides for punishment of his negligence and want of caution[d]. This himself was to bring, together with the price of redemption or expiation. Now this being done against his will, might also be done without the observation of any other; and yet upon discovery he was thus to act his own amends and penalty.

§ 5. And indeed the very expense of sacrifices, to the bringing of

[b] [Exod. xxi. 25, 26.]

[c] Lib. ii. chap. 2. rule 3. [§ 8. vol. ix. p. 364.]

[d] [Lev. xxii. 14.]

which the criminals were sentenced by the law, is sufficient demonstration of this enquiry; for it was no small burden to them, and diminution of their estates, to take long journeys, and bring fat beasts and burn them to the Lord; but to this they themselves were tied, without injunction from the priest or sentence from the judge. And this appears, because they were tied to a distinct punishment if the matter fell into the judge's hand: they were in case of theft to restore four-fold. But if they had sinned in this instance or in any other that men commit, they were bound to come and confess it, and 'shall recompense the trespass with the principal thereof[e],' and add a fifth part to him against whom they have trespassed. This the Jews call *confessionem super peccato singulari*[f], a special confession of a sin; to which because the sinner was sentenced by the law, and had a lighter amends appointed him if he did it voluntarily, but a much heavier if he came before the criminal judge, it follows plainly that God tied these delinquents to a voluntary or spontaneous susception of their punishment. It was indeed an alleviation of their punishment; for the criminal was bound to confess (say the Jewish doctors[g]) and say when the beast goes to sacrifice, thinking as if he were going as the beast is, *O Domine, ego reus sum mortis, ego commeruissem lapidari propter hoc peccatum, vel strangulari propter hanc prævaricationem, vel comburi propter hoc crimen,* 'O Lord, I am guilty of death, I have deserved to be stoned, or strangled, or burnt alive for this crime,' according as the sin was: but his being the executioner of the divine sentence in the lesser instance did prevent the more severe and intolerable condemnation.

§ 6. For indeed such is the mercy and dispensation of God; God's law decrees evil to him that does evil: if we become executioners of the law of God and of His angry sentence, we prevent the greater anger of God; according to that of S. Paul[h], 'judge yourselves, brethren, that ye be not judged of the Lord.' If we humble ourselves, God will exalt us; if we smite, He will spare; if we repent, He will repent: but therefore in these cases between God and us it is so far from being a grievance, that we become executioners of the sentence decreed by law against us, that though it be an act of justice in God to oblige us to it, yet it is also a very great mercy. For as in the law of Moses the spontaneous susception of the punishment did prevent the heavier hand of the judge from falling on him, so in the evangelical law it prevents the intolerable hand of God. So that in relation to the law of God it is an action of repentance; and repentance being a penal or punitive duty, he that was tied to bring in his own oblation, to make his own amends, to confess willingly his sin, was in effect tied to nothing but to a voluntary repentance.

§ 7. And thus it is also in some proportion in human laws. For

[e] [Num. v. 6—8.]
[f] וידוי על עון מיוחד.
[g] [cf. Ugolin. thesaur. antiq. sacr., tom. x. p. 678.]
[h] [1 Cor. xi. 31.]

by these premisses thus much is gained, that to oblige the criminal to a spontaneous suffering of the punishment appointed by the laws of a just superior is not naturally unjust, and it is not always intolerable, and it may be very reasonable, and it may be a design of mercy, or at least a very apt ministry of justice: and therefore there can be no reasonable objection against it, but that upon just account, and in just measures, and for great reason, and by the proportions of equity it may be done in human laws. For,

§ 8. 1) Whatsoever is not against the law of nature, nor the law of God, may be done or enjoined to be done by the laws of man; for the power of magistrates is the next great thing to God and nature. Now concerning this we have security not only from the foregoing instances, but from the law of Christ concerning divorce upon the instance of adultery: the offending party loses his or her right respectively over the body of the other, and cannot lawfully demand conjugal rights. The injurious person may beg for pardon and restitution, but is unjust if he require any thing as duty. The woman loses her rights of society, and the man of superiority, in case they be adulterous; and if they do not quit their former rights, and sit down under their own burden, and minister the sentence of God by their own hands, they sin anew: every such demand or act of dominion is iniquity and injustice, it is an act of an incompetent power, and therefore, under pain of a new sin, they must not act under it.

§ 9. 2) A man can inflict punishment upon himself. Thus Zaccheus in expiation of his sins offered half his goods to the poor, and restitution four-fold; which was more than he did need; for if his confession and restitution were spontaneous, he was tied only to the principal, and the superaddition of a fifth part, as appears above. But he chose the punishment, even so much as the judge himself could have inflicted.* Thus we read of a bishop[1] in the primitive ages of the church who, *quia semel tactu fœmineo sorduerat*, 'because he had once fallen into uncleanness,' shut himself up in a voluntary prison for nine years together: and many we read of who out of the spirit of penance lived lives of great austerity, using rudeness to their bodies; by the pain of their bodies to expiate the sin of their souls. Now whatsoever any man hath power to do to himself, that the law hath power to command him; supposing a reason or a necessity in the law proportionably great to the injunction, and to be of itself a sufficient cause of the suffering. It is true a man may do it to himself to please his humour, or for vain-glory, or out of melancholy. I do not say he does well in so doing; but that he hath power to do it, without doing injury to any one: and if he does it to himself without cause, or without sufficient cause, he does no man wrong; he does no more than he hath power to do, always pro-

[1] [Potamius, bishop of Braga, but the period of his retirement was nine months. —Concil. Tolet. x. A.D. 656. Harduin., tom. iii. col. 983.]

vided he keeps within the limits of the sixth commandment. Now although the law pretends not to this power of doing it without reason, because all the power of the law is ἐν τῷ πρὸς τι, 'in relation' to others, in commutative and distributive justice, and public and private charities; yet the same authority which any man hath over himself in order to private ends, the law hath over him in order to the public; because he is a part of the public, and his own power over himself is in the public, as every particular is in the universal. Nay the law hath a greater power than the man, for a man hath not power over his own life, which the law hath; so that whatever a man alone can do, that the law can command him to do: (except it be in such things which are wholly by God left in a man's power, and are subjected to no laws of man, and commanded by no law of God; as in the matter of single life, and other counsels evangelical:) the same things (I say) though not for the same reasons. If therefore the man can upon himself inflict an evil which he hath deserved, the law can compel him, that is, she hath competent authority to do it; and then he is bound in conscience.

§ 10. 3) In matters favourable, and yet of great interest, we find that there are many events by the sentence of the law without the sentence of a judge. Thus the right of primogeniture is sufficient ordinarily to enter upon the inheritance without a solemn decree of court; and if we consider the reason of this, it will be of equal force in the present enquiry. For when matters are notorious, and the people willing, and it is every man's case, and there is a great necessity, and public utility, it is sufficient when the rule is set; every man knows his part, and his way, and judges are not necessary. But when men are to blame, and there are intrigues in causes, and men will snatch at what is none of their own, and they will not understand their duty, nor judge righteous judgments in things concerning themselves and their neighbours; it is necessary that there be judges and advocates and all the inferior ministers of laws, that where the law is intricate, and men cannot judge and discern aright, or when they are interested and will not, the law may be interpreted, and their duty explained, and every man righted that otherwise would be wronged. The sentence of the judge is but accidentally necessary: for the law saying that the eldest son is heir to an intestate father, the case is plain, and who is the eldest son is notorious, and he is willing enough to enter upon the inheritance; and therefore besides the law in this case there needs no sentence of the judge. Now the law is as plain in the condemnation of some crimes, and the assignation of some punishments. But because men are not willing to enter into punishment, and they are not tied publicly to accuse themselves, therefore there are judges to give sentence, and executioners appointed. And this is well enough in some cases: but because there are some cases in which it is necessary that the laws be obeyed in private as well as in public, and yet without penalties a

law is but a dead hand and a broken cord; the law annexes punishments, but is forced to trust the sinning hand to be the smiter, because the private action cannot be publicly punished, because not brought before the judge.

§ 11. 4) Besides this, there are some actions of so evil effect as to the public, that for detestation's sake they are to be condemned as soon as done, hated as soon as named, strangled as soon as born; and when by such a sentence the act is represented so foul, the man stands more ready for repentance, and himself is made the instrument. It is like a plain case in which any man may be allowed to be a judge: for modesty's sake and for humanity every man will condemn some sins, even though themselves be the guilty persons. However the law takes the wisest course to give an universal sentence, that as the man is αὐτοκατήγορος, so he may be αὐτοκατάκριτος, 'self-accused,' and 'self-condemned;' and not to expect the contingent discovery, and the long deferred solemnities of law. "Some sins go before unto judgment," says the apostle[k], "and some follow after:" that is, some are condemned *ipso jure* by the law, and the man does *ipso facto* incur the penalty; others stay for the sentence of the judge.

§ 12. 5) In the court of conscience every man is his own accuser, and his own executioner; and every penitent man is a judge upon himself: God trusts man with the infliction of punishments and hard sentences upon himself for sin; only if man fails, God will judge him to worse purposes; and so does the law. And as the impenitent people favour themselves to their own harm, for they sin against God even in their very forbearing to punish and to kill the sin; so do the impenitent disobey the law by not being their own executioners of wrath: but in both cases the conscience is obliged.

The thing therefore is just, and reasonable, and useful.

§ 13. Now for the reducing of this to practice, and stating the cases of conscience for the subject, as I have already done for the lawgiver, I am to shew,

1) In what cases the conscience of the subjects can be bound to inflict penalties upon themselves without the sentence of the judge.

2) By what signs we shall know when the law does intend so to bind; that is, when the sentence is given by the law, so that the sinner is *ipso facto* liable to punishment, and must voluntarily undergo it.

IN WHAT CASES THE CRIMINAL IS TO BE HIS OWN EXECUTIONER.

§ 14. 1) When to the execution of the punishment appointed by the law there is no action required on the part of the guilty person,

[k] [1 Tim. v. 24.]

the conscience is bound to submit to that sentence, and by a voluntary or willing submission verify the sentence; such as are excommunication, suspension, irregularity and the like. Thus if irregularity be *ipso facto* incurred, the offending person is bound in conscience not to accept a benefice or execute an office to which by that censure he is made unhabile and unapt. If a law be made that whoever is a common swearer shall be *ipso facto* infamous, he that is guilty is bound in conscience not to offer testimony in a cause of law; but to be his own judge and executioner of that sentence. But this is not true in all cases, but with the provision of the following measures.

§ 15. 2) If the law imposes a penalty to be incurred *ipso facto*, yet if the penalty be moderate, equal, and tolerable, the conscience is obliged to a voluntary susception of it, before the sentence of the judge, although the sentence be not privative, but executive; that is, though there be something to be acted by the guilty person upon himself. Thus if excommunication be incurred *ipso facto*, he that is guilty of the fact deserving it, and is fallen into the sentence, is not only bound to submit to those estrangements and separations, those alienations of society and avoidings which he finds from the duty of others, but if by chance he be in a stranger place where they know not of it, and begin divine service, he is bound in conscience to go away, to resign an ecclesiastical benefice if he be possessed of one, and other things of the same necessity for the verification of the sentence: and the reason is, because every act of communion or office is in his case a rebelling against the sentence of the law, the verification of which depends upon himself as much as upon others. For every such person is like a man that hath the plague: all men that know it avoid him; but because all men do not know it, he is bound in conscience to avoid them, and in no case to run into their company, whether they know him, or know him not. Now because this does not oblige to all sorts of active executions of the sentence, the following measures are the limit of it.

§ 16. 3) The law does not oblige the guilty person to such active executions of the sentence which are merely and entirely active; that is, which do not include a negative, or something contrary to the passive obedience. Thus if a traitor be sentenced to a confiscation of goods, and this be *ipso jure* incurred, the guilty person is not tied to carry all his goods to the public treasure; but he is tied not to change, not to diminish, not to aliene, not to use them otherwise than the law permits; because if he do any thing of these he does something against the sentence of the law, which in his case is rebellion and disobedience. He may be truly passive and perfectly obedient to the sentence of the law without hiring porters or waggons to carry his goods away; and the custom of the law requires it not: but if he does aliene his goods he hath not so much as the passive obedience.

§ 17. 4) In punishments corporal the laws do not proceed with-

out the sentence of the judge, except it be in the court of conscience, which is voluntary and by choice. Thus no man is *ipso jure* condemned to be hanged, or to be whipped, and no man is by any law bound to inflict such punishments on himself; because there is a natural abhorrency in such actions, and it is that odious part of the law which is so much against nature and natural affection that none but the vilest part of mankind are put to do it unto others; and therefore because the laws do enjoin no such thing, the enquiry is needless, whether in such cases the conscience be obliged. But this is wholly depending upon the manners of men, and the present humours of the world. Amongst some nations it was otherwise; and no question but it might be so, if by circumstances and the accidents of opinion and the conversation of the world the thing were not made intolerable. Plutarch[l] tells of Teribazus, that being arrested by the officers of death he resisted with such a bravery as he used against the king's enemies: but being told they were sent by the king, he presently reached forth his hands and offered them to the lictors to be bound. But this was no great matter, it was necessary; and he that is condemned to die by a just authority, owes to it at least so much that he resist not, that he go to death when he is called, that he lie down under the axe when he is commanded: so did Stilicho[m] at the command of his son in law, Honorius the emperor. It was more which was done by the Lithuanians[n] under Vitoldus their king, who was brother to that Vladislaus famous for a memorable battle against the Turks; he commanded many to death, and they died without the hangman's hand, being the executioners of their king's laws upon themselves. And Sabellicus[o] tells that the Ethiopians, when their king sent a messenger with the ensigns of death, they presently went home and died by their own hands: and this was accounted among them so sacred an obligation, that when a young timorous person thought to have fled, his mother took her girdle and strangled him, lest he should dishonour his family by disobeying the law out of fear of death. This was brave; but some men cannot be willing to die, and few can well suffer it; but therefore it is hard that any one should be compelled to do it to himself. Therefore the laws of christendom are wise and gentle; and excepting that of the Lithuanian prince, who is reported to have been a tyrant, it is not enjoined by any prince or any law amongst us, that I know of. But this is not only true in active executions, but in the passive penalties, which are very violent and extreme. Thus if a man were justly condemned to be immured and starved to death, he is tied to submit to it, as not to rebel, and by violence quit himself: but he is not tied so much as to the privative execution; that is, he is not bound to abstain from meat, if it be brought to

[l] De superstitione. [tom. vi. p. 643.]
[m] [Zosim. hist., lib. v. cap. 34.]
[n] [Sabell., ennead. x. lib. 4. tom. ii. col. 926 A.]
[o] Lib. ii. ennead. 1. [tom. i. col. 38 B. ed. fol. Bas. 1560.]

him. Thus we find in story of the pious Persian lady[p], who to her father condemned to death by starving gave her breasts to suck, and preserved his life; and he not at all made infamous by not dying, but had his life given as the reward of his daughter's piety.

§ 18. 5) Condemned persons are not tied to put themselves to death, or cut off a member with their own hands, or do execution, by doing any action, or abstaining from doing any thing, when such doing or abstaining is the sufficient, or the principal, or the immediate killing or dismembering. But to the under ministries they are tied, which cannot be done without them; that is, they are tied so far to act, as without which they cannot suffer: and this is to be extended even to the principal and immediate act of killing, if they only ordinarily can do it. Thus a condemned criminal is bound to go to execution, or suffer himself quietly to be carried; to lie down under the hangman's axe, to ascend the ladder: and it is a great undecency of dying, and directly criminal, which is frequent enough in France, and is reported of Marshal Biron, to fight with the executioner, to snatch the weapons from the soldiers, to force the officers to kill him as a wild bull or lion is killed. But a condemned man is also tied to drink his poison, if that be appointed him by law: for though this be the immediate act of killing, to which ordinarily condemned persons are not obliged, yet because it cannot well be done by an executioner without his consent, or extreme violence, the guilty person is bound to drink it: the reason is, because the law must be obeyed, and at least a passive obedience is to be given to the severest of her sentences; and the passiveness of a man is to be distinguished from the passiveness of a beast: that which cannot be avoided must be borne well; and therefore if a man be banished, he must go away, and not be dragged; and he that so resists the laws, that he forces her ministers to hale the criminal to death like an unwilling swine, deserves the burial of an ass or dog. But this always must suppose the laws to be just, and the power competent; for else the suffering person may consider whether the quiet submission to it be not a verification of the sentence, or of the authority, though even in such cases it is not the hangman that is unjust, or to be resisted, but the judge or the laws; and therefore they are to be protested or declared against; for that is all which is left to be done by the oppressed person.

§ 19. 6) When the punishments are principally or merely medicinal, the conscience is bound to a voluntary execution of the sentence, if the law requires it. For then the laws are precepts of institution and discipline; and they are intended as mercies to the man, as well as to the public; and of mercy every man may very

[p] [Perus is the name of the heroine of this story in Valerius Maximus (lib. v. cap. 4. § 1. de extern.); a similar instance is related of a daughter towards her mother by Pliny (hist. nat., lib. vii. cap. 36), and of Xanthippe towards her father Cimon by Hyginus (fab. ccliv.)]

well be minister. It hath in it no undecency for a man to mingle his own severe potion, or let himself blood, or lance an ulcer; and there is no more in the medicinal punishments of the law. Thus the laws can command us to fast, to wear sackcloth upon the bare skin, to go barefoot, to watch all night upon a solemnity of expiation, to inflict disciplines, and the like; and for these we are to expect no other process but the sentence of the law, no judge but our consciences, no executioners but ourselves. This relies upon the former reasons, and the mere authority of the law, and the nature of the thing free from all objections.

§ 20. 7) All sentences of law which declare a fact to be void, or a charge and expences to be lost, or a privilege to cease, are presently obligatory to the conscience. *Irrita prorsus ex nunc, et vacua nunciamus,* is usual in the style of laws: *et sit ipso jure irritum et inane, et careat omni robore firmatitis, non obtineat vires;* 'let it be of no force, let it not prevail, let it be void,' let him want all privilege, all honour, dominion, action, or profit. For these and the like words, say the logicians, have the force of an universal sign, and do distribute the noun that is governed by the verb; so they speak: that is, it signifies and hath force in every particular, and in every period of time; 'let it want force,' that is, let it want all force, that is, be of no use at all; *careat* is as much as *omnino, penitus, prorsus careat.*

§ 21. 8) But these particulars suffer one limitation. A man is not bound to suffer the penalty of the law before the sentence of the judge, though the fact be sentenced and condemned *ipso jure,* if the fact be made public, and brought before the judge: because he taking it into his cognizance, revokes the former obligation, by imposing a new; by changing the method of the law, and lessening the expectation. Thus by the laws ecclesiastical, which were anciently of force in England, and are not yet repealed, *notorius percussor clerici,* 'he that openly or manifestly strikes a bishop or priest' is *ipso jure* excommunicate; and to this sentence the guilty person is bound to submit: but in case he be brought before the criminal judge, and there be solemn process formed, he may suspend his obedience to the law, because the judge calls him to attend to the sentence of a man.

§ 22. 9) But yet this is also so to be understood to be true in all, *exceptis sententiis irritantibus,* 'excepting sentences of the declaring actions to be null, or privileges void.' For in these cases, though the judge do take into his cognizance the particular fault, and give a declarative sentence of such a nullity and evacuation, yet the action does not begin to be null, or the privilege to cease from the sentence of the judge, but from the doing of the fault and the sentence of the law, and therefore if a question arises, and the judge declare in it, the nullity is only confirmed by the judge, but it was so by the sentence of the law. Now the reason of the difference in the case of

nullities and evacuations from other cases is, because that which is not hath no effect, and can produce no action; and as a citizen[q] told the people of Athens, who upon the first news of Alexander's death would have rebelled, 'Stay,' says he, 'make no haste; for if he be dead to-day he will be dead to-morrow:' so if the judge declare that such an action was null, it was null all the way; if he says it be dead now as a punishment of the fault, it was dead as soon as the fault was done; for it died by the hand of the law, not by the hand of the judge. In other things the limitation is to be observed.

§ 23. 10) And this also holds in case that it be upon any account necessary that the judge give a declarative sentence: for sometimes in regard of others the judge must declare such a person excommunicate, or deprived, or silenced, or infamous, that they also may avoid him, or do their respective duties. But although the guilty person be in conscience regularly obliged before that declarative sentence, it being nothing but a publication of what was in being before; yet it being a favourable case, and the law not loving extremities and rigours of animadversion, it is to be presumed that the law gives leave to the guilty person to stay execution till publication. Because no man is bound directly to defame himself; which he will hazard to do, if he executes the sentence upon himself before the judge calls others into testimony and observation of the sentence. But though the sentence may upon favourable conditions be retarded, it must at no hand be evacuated. Therefore if the judge meddle not, the man is left to the sentence of the law. And it is in all these particulars to be remembered that the law is a mute judge, and the judge is a speaking law. It is the saying of Cicero[r]; and from thence is to be concluded, that when the judge hath spoken, he hath said no new thing, and he hath no new authority; and therefore if the law hath clearly spoken before, she hath as much authority to bind where she intends to bind, as if she speaks by her judges.

§ 24. These considerations and this whole question is of great use in order to some parts of repentance, and particularly of restitution. For if a law be made that if a clerk within twelve months after the collation of a parish church be not ordained a priest, he shall *ipso jure* forfeit his ecclesiastical benefice; if he does not submit to the sentence, and recede from his parish, he is tied in conscience to make restitution of all the after profits which he receives or consumes. So that it hath real effect upon consciences, and the material occurrences of men.

§ 25. But then for the reducing of it to practice, I am next to account by what signs we shall know when it is *sententia lata a jure*, when it is *lata ab homine*; when it is *lata*, and when *ferenda*; that

[q] [Phocion, apud Plutarch., cap. 22. tom. iv. p. 333.]

[r] [De leg., lib. iii. cap. 1. Cf. de offic., lib. i. cap. 25 fin.]

is, when the criminal is to attend the sentence of the judge, and the solemnities of law and execution by the appointed officer; and when he is to do it himself, by his own act or positive submission upon the sentence of the law.

SIGNS BY WHICH WE MAY JUDGE WHEN THE CRIMINAL IS CONDEMNED *IPSO FACTO.*

§ 26. The surest measures are these. Those laws contain *sententiam latam,* and oblige the criminal to a spontaneous susception of the punishment,

1) When the law expressly affirms that the guilty person does *ipso facto* incur the sentence without further process, or sentence of the judge.

2) When the law says that the transgressor shall be bound in conscience to pay the fine, or suffer the punishment contained in the sanction of the law. Which thing because it is not usual in laws, lest I should seem to speak this to no purpose, I give an example out of the Spanish laws: for I find in the laws of the kingdom of Castile[s] divers instances to this purpose; particularly after the assignation of the secretary's fee, appointing how much he may receive for the instruments of grace which he makes, it is added, *Jurent quod observabunt ea quæ in præcedenti capitulo ordinata sunt, et quod non accipient munera, et quod solvent pœnas si in eas inciderint, ad quas ex nunc eos condemnamus, ita ut sint obligati in foro conscientiæ ad solvendum eas, absque hoc quod sint ad illas condemnati.* And the same also is a little after decreed concerning judges and public notaries[t], that they take nothing beyond their allowed fees and salaries; and if they do they are to pay a certain fine. They are also to swear to observe that ordinance; and in case they do not, that they will pay the fines to which the law does then sentence them, that they be bound in conscience to do it without any further condemnation by the sentence of any man. Now the reason of this is, because the conscience being entrusted and charged with the penalty, must suppose only the duty and obligation of the man whose conscience is charged. It were foolish to charge the conscience, if the conscience were not then intended to be bound to see to the execution: but that could not be, if the sentence of the judge were to be expected; for that is a work of time, and will be done without troubling the conscience. Therefore the conscience being made the sheriff or the witness with the charge of execution, supposes the whole affair to be his own private duty.

§ 27. 3) In censures ecclesiastical it hath sometimes been the usage of the legislator to impose a penalty, adding, that *donec satis-*

[s] Lib. ii. ordinat. regal., tit. 9. l. 1. [Apud Suarez, de leg., lib. v. cap. 7. p. 280.]

[t] Ibid., tit. 15. [Apud Suarez, ibid.]

fecerit, until such or such a thing be done, the criminal shall not be absolved: and this also is an indication that the sentence is made by the law, and is *ipso facto* incurred by the delinquent, because it leaves a secret tie upon his conscience obliging him to do it; which were needless, if the criminal judge were to be entrusted with it, for he is otherwise sufficiently entrusted with compulsories to secure the executions. Of this nature is that constitution of Innocentius IV. *cap. 'Romana,'* § *'Procurationes,' de censibus, lib.* 6 [u], describing the order for an archbishop's visitation of his own and the dioceses of his suffragan bishops; forbidding severely him or any of his followers to receive a fee, bribe, reward, or present, *qualitercunque offeratur*, 'under what pretence soever it be offered;' lest he be found to seek that which is his own, not that which is of Jesus Christ; adding, *Quod si fuerit contra præsumptum, recipiens maledictionem incurrat, a qua nunquam nisi duplum restituat liberetur*, 'he that shall presume to do otherwise, and receive any thing, shall incur a curse, from which he shall never be absolved till he have restored it twofold.' This relies upon the former reason.

§ 28. 4) Panormitan[x] gives this rule, that when a sentence is set down in the law in words of the present or preter tense, it concludes the sentence to be *ipso facto* incurred; for whatsoever is *ipso jure* decreed is *ipso facto* incurred: and of this decree the present and past tenses (says the abbat) are sufficient indication. That is, if the words be damnatory (as *excommunicamus, anathemate innodamus*, 'we do deprive him of all rights and offices,' &c.); for if the judge using the like words passes a sentence by virtue of those words, so does the law, there being the same reason, the same authority, the same purpose signified by the same form of words. But if the words be of the present or past time, and yet not immediately damnatory, they do imply the sentence to be made afterwards; as *decernimus, definivimus, declaramus*, and the like. But if these words signify only ministerially, and not principally; that is, if they be joined with other words in the present or past tense, then they declare the sentence past, and *ipso facto* to be incurred; as *declaramus eum privatum dominio bonorum;* then the case is evident.

§ 29. 5) Of the same consideration it is when the sentence of the law is set down with the verb substantive *sum*, of what tense soever, unless by a future participle his nature be altered. Thus if a law says, he that is absent from his parish, without just cause to be approved by his bishop, above six months, *est* or *erit infamis*, 'is' or 'shall be infamous;' the sentence is *ipso jure lata*, inferred by law, and *ipso facto* incurred; because the verb annexes the punishment to the fact without further process. But if the verb be annexed to a future participle, the case is altered; the sentence is not to be

[u] [Sext. decret., lib. ii. tit. 20. cap. 1. col. 514.]

[x] Cap. 'Cæterum.' [part. i. fol. 45.] et cap. 'Nonnulli,' de rescriptis. [fol. 74.] cap. 'Novit.' in fine, de his quæ fiunt a prælato. [n. 8. fol. 67. part. iii.]

undergone till the judge have declared it. Now this relies upon the force of the words and the proper grammatical way of speaking, which is the best way of declaring the mind of a man, or the mind of the law; unless where it is confessed that the lawgiver did not intend or use to speak properly or by grammar, but by rude custom. This note I have in A. Gellius[y], *Verbum esse et erit, quando per se ponuntur, habent atque retinent tempus suum; cum vero præterito junguntur, vim temporis sui amittunt, et in præteritum contendunt.* If these words be not altered, they signify just by themselves; *est* or *erit excommunicatus,* or *infamis,* signifies the punishment to begin as soon as the fact is done: but *est excommunicandus,* that is a future that relates to another time, and stays for the sentence of the judge. But there must be something more to clear this. For if *erit* be the future tense, why shall it not as well signify *sententiam ferendam,* as *est excommunicandus;* since the verb is to be left to his own time, as well as the present tense brought thither by a future participle? Therefore to this I add, that when the verb or participle does signify the action or ministry of some other person besides the law and the criminal, then it shews that the declaration of the judge is to be expected; as in *est excommunicandus,* that is, 'he is to be excommunicated,' viz. by the sentence of his ordinary judge: but *erit infamis,* or *erit excommunicatus,* implies no man's action at all, but supposes the thing finished without any more to do; and then comes in the rule of Nigidius in A. Gellius before spoken of. *Infamis* signifies presently, that is, he shall be so from the doing of the crime; and *excommunicatus* signifies present or past, and therefore by it the future tense shall be altered, and therefore the sentence presently incurred. But concerning this particular, who pleases to be critical and curious in minutes may delight himself by seeing seventy-five fallencies, and alterations of cases by the variety of tenses expressed in words of law, in Tiraquel in his excellent and large commentaries *in L. 'Si unquam,' C. De revocandis donationibus,* in the interpretation of the word '*revertatur*[z].' For my own part, I am content to assign such measures as are sure, plain, easy and intelligible. *Nobis non licet esse tam disertis.*

§ 30. 6) The sentence of the law does presently oblige the conscience if it be expressed in adverbs of hasty or present time; such as are *confestim, illico, extunc, extemplo,* 'presently,' 'forthwith,' 'from thenceforward,' and the like: for those who appoint the punishment to be incurred without any interval of time, in effect say that we are not to expect the dull and long protracted methods of courts, and judges, and commissions, and citations, and witnesses, and adjournments. *Protinus, i. e. non expectato judiciorum ordine,* say the lawyers.

[y] Noct. Attic., lib. xvii. [cap. 7.]
[z] [tom. vi. pp. 213-41. ed. fol. Franc. 1597.]

Protinus ad regem cursum detorquet Hiarbas[a].

'Forthwith,' that is, without the longer methods of the court.

Nec mora, continuo matris præcepta facessit[b].

These words and their like have a present effect, and therefore do signify a present obligation of conscience. Concerning the signification of which and the like words, it is hard to say whether we are to be guided by the lawyers or by the grammarians. The lawyers are the best witnesses of sentences, and precedents, and the usages and customs of laws; and therefore can best tell how the laws are said to bind, and what sentences they are said to contain: and because by them we are to be judged in public if questions do arise, from them also we may take our rule in private. This seems reasonable: but on the other side, I find that lawyers themselves say otherwise; and I have seen Tiraquel much blamed for quoting Bartholus, Baldus, and Salicetus[c], for the signification of the word *mox*, 'by and by,' which is of use in this present rule: because though they were great lawyers, yet they were no good grammarians; and therefore that in these cases, Erasmus and Calepine, Valla and Linacre, Cicero and Terence, Priscian and Donatus, were the most competent judges. There is something on both sides which is to weigh down each other according as some other consideration shall determine. But therefore as to the case of conscience, I shall give a better and surer rule than either one or other, or both: and that is,

§ 31. 7) This being in matters of load and burden, by the consent of all men, the conscience and the guilty person is to be favoured as much as there can be cause for. Therefore whenever there is a dispute whether the sentence of the law must be incurred presently, or that the sentence of the judge is to be expected; the presumption is always to be for ease, and for liberty, and favourable senses. Burdens are not to be imposed upon consciences without great evidence, and great necessity. If the lawyers differ in their opinions concerning the sentence, whether it be already made, or is to be made by the judge, let them first agree, and then let the conscience do as she sees reason. Thus if the word *mox*, 'by and by,' be used in a sentence of law, because we find that in some very good authors it signifies 'with some interval of time,' (as in Cicero, *Discedo parumper a somniis, ad quæ mox revertar*[d]; and, *Præteriit villam meam Curio, jussitque mihi nunciari mox se venturum*[e];) therefore we may make use of it to our advantage, and suppose the conscience of a delinquent at liberty from a spontaneous execution of a sentence of law, if for that sentence he have no other sign but that the word *mox* is

[a] Virgil., lib. iv. Æneid. [196.]
[b] Lib. iv. Georg. [548.]
[c] Alph. a Castro, lib. ii. de leg. pœn., cap. 7. [col. 1751.]
[d] Lib. i. de divinat. [cap. 23.]
[e] Ad Attic. [lib. x. epist. 4.]

used in the law. *In pœnis benignior est interpretatio facienda*[f], 'in matters of punishment we are to take the easier part;' and that is, to stay from being punished as long as we can: and in proportion to this Panormitan gives this rule, 'When the words of the law signify the time past, or the time to come, we are to understand it in the more favourable sense; and that it includes the sentence of the judge, before which the criminal is not obliged.' And to this very purpose the words of infinite and indefinite signification are to be expounded: and this answers many cases of conscience, and brings peace in more; and the thing being reasonable, peaceful, and consonant to the common opinion of the lawyers, ought to pass for a just conclusion and determination of conscience.

§ 32. 8) After all, as there is ease to the criminal, so there must be care of the law; and therefore when a law imposes a punishment which would prove invalid, to no purpose and of no effect, unless it be of present force upon the committing of the fact, it is to be concluded the law intends it for a *sententia lata a jure*, that it perfectly obliges the conscience of the guilty person. The reason is, because it cannot be supposed that the law should do a thing to no purpose, and therefore must intend so to oblige as that the sin be punished. If therefore to expect the sentence of the judge would wholly evacuate the penalty, or make it insufficient to do the purpose and intention of the law; the sentence of the law must be suffered by the guilty person without the judge. And this is true, however the words of the law be used, whether in the past, present, or future time, whether simply or by reduplication, whether imperatively or infinitely: such are the penalties of infamy, irregularity, nullity of actions or contracts, especially if they be of such contracts which if they once prove valid, are so for ever, as in the contract of marriage. And therefore if a law be made that a man shall not marry her whom in her husband's life-time he had polluted, this must be supposed to be meant of nullifying the contract before it is consummate; that is, it is a sentence which the criminal must execute upon himself: for if he does not, but *de facto* marries the adulteress, and consummates the marriage, it will be too late to complain to the judge; for he cannot annul the contract afterwards.

[f] Cap. 'In pœnis,' de reg. jur. [ad fin. Sext. decret., reg. 49. col. 747.]

RULE III.

PENALTIES IMPOSED BY THE JUDGE MUST BE SUFFERED AND SUBMITTED TO, BUT MAY NOT AFTER SUCH SENTENCE BE INFLICTED BY THE HANDS OF THE CONDEMNED.

§ 1. THE first part of this rule hath in it but little difficulty, for there is only in it this variety; in all punishments that are tolerable, that is, all but death, dismembering, or intolerable and extremely disgraceful scourgings, and grievous and sickly imprisonments, we owe not only obedience to the laws, but reverence and honour; because whatsoever is less than these, may without sin, and without indecency, and without great violations of our natural love and rights, be inflicted and suffered.

§ 2. But the other evils are such as are intolerable in civil and natural account; and every creature declines death and the addresses and preparations to it with so much earnestness, that it would be very unnatural and inhuman not to allow to condemned persons a civil and moral power of hating and declining death, and avoiding it in all means of natural capacity and opportunity. A man may, if he can, redeem his life with money, but he must not corrupt justice; a man may run from prison if he can, but to do it he must not kill the gaoler; he may escape death, but he must not fight with the ministers of justice; he may run away, but he must not break his word; that is, he may do what is in his natural capacity to avoid these violences and extremities of nature, but nothing that is against a moral duty. *Non tunc peccat quisquam cum evitat supplicium, sed cum facit aliquid dignum supplicio,* 'he that avoids his punishment sins not, provided that in so doing he act nothing else worthy of punishment.' So S. Austin[s].

§ 3. This relies also upon a tacit or implicit permission of law; for in sentences given by judges, and to be executed by the ministers of law, the condemned person is not commanded, nor yet trusted with the execution, and it is wholly committed to ministers of purpose: and therefore the law supposes the condemned person infinitely unwilling, and lays bars, restraints, guards and observators upon him; from all which if he can escape, he hath done no more than what the lawgiver supposed he was willing to do, and from which he did not restrain him by laws, but by force. But if to fly from prison, or to decline any other sentence be expressly forbidden in the law, or if it be against his promise, or if a distinct penalty be annexed to such escapings, then it is plain that the law intends to oblige the conscience, for the law cannot punish what is no sin; it is in this case a transgression of the law, and therefore not lawful. But

[s] Lib. de mendac., cap. 13. [tom. vi. col. 433 C.]

because greater than death the law hath no punishment, it cannot but be lawful for a condemned man to escape from prison if he can, because the law hath no punishment to establish a law against flying from prison after the sentence of death. And if it be said that if a prisoner who flies be taken, he hath more irons and more guards upon him, and worse usage in the prison, that is matter of caution not punishment, at least not of law: for as for the gaoler's spite and anger, his cruelty and revenge, himself alone is to give accounts.

§ 4. But now for the other part of the rule there is some more difficulty; which is caused by the great example of some great and little persons, who to prevent a death by the hand of their enemies, with the additions of shame and torment, have laid violent hands upon themselves[h]. So did Zeno[i] and Chrysippus, Cleanthes[j] and Empedocles[k], Euphrates[l] the philosopher and Demosthenes[m], Cato Uticensis[n] and Porcius Latro[o], Aristarchus[p] and Anaxagoras[q], Cornelius Rufus[r] and Silius Italicus[s]. The Indians esteemed it the most glorious way of dying, as we find in Strabo[t], Olympiodorus[u], and Porphyry[x]: and Eusebius[y] tells that most of the Germans did use to hang themselves. And amongst the Romans they that out of shame of being in debt, or impatience of grief, killed themselves, might make their wills, and after death they stood; *manebant testamenta, pretium festinandi,* saith Tacitus[z], that was the price of their making haste. Plato[a] discoursing of this question, said, *οὐ μέν τοι ἴσως βιάσεται αὑτόν· οὐ γάρ φασι θεμιτὸν εἶναι,* 'peradventure a man must not do violence to himself, for they say it is not lawful.' Upon this, Olympiodorus discoursing on these words, reckons five cases in which the stoics held it lawful to kill themselves; α) for public good; β) for private necessity, to avoid a tyrant's snare; γ) in cases of natural madness; δ) when the body is intolerably afflicted, ε) and lastly, in extreme poverty. And the Greeks commended a Pythagorean woman[b], who being asked why she and her sect did not eat beans, she said, she would rather eat them than tell: but

[h] Alexander Aphrodiseus, in Aristot. lib. ii. de anima. [fol. 158 b. ed. fol. Ven. 1534.] Galen. 5. de loc. affect. [? lib. iii. tom. viii. p. 190.]

[i] Vide Diogen. Laert. in Zenone. [lib. vii. § 28, 9.] Lucian. in Macrob. [cap. 19.]

[j] [Diog. Laert., lib. vii. § 176; Lucian. ubi supra.]

[k] [Diog. Laert., lib. viii. § 69.]

[l] [Dion. Cass., lib. lxix. cap. 8.]

[m] [Plut. in vit. Demosth., cap. 29. tom. iv. p. 742.]

[n] [Plut. in vit. Caton., cap. 70. tom. iv. p. 490.]

[o] [Euseb. chron. interpr. Hieron, olymp. cxciv. 1. p. 156. ed. fol. Amst. 1658.]

[p] [Suidas, in voc. Ἀριστάρχος.]

[q] Plutarch. in Pericle. [cap. 16. tom. i. p. 628; Diog. Laert., lib. ii. § 13.] Suidas. [in voc. Ἀναξαγόρας.]

[r] [Corellius Rufus,—Plin., lib. i. epist. 12.]

[s] [Plin., lib. iii. epist. 7.]

[t] Lib. xv. [tom. ii. p. 1016. ed. fol. Oxon. 1807.]

[u] In Phædon. Platon.

[x] Περὶ ἀποχ. ἐμψυχ. [lib. iv. cap. 18. p. 360.]

[y] [Præp. evang., lib. vi. cap. 10. p. 277 fin.]

[z] Annal., lib. vi. [cap. 29.]

[a] [Phæd., cap. xiii. tom. v. p. 144.]

[b] [Jamblich. vit. Pythag., cap. 31. p. 398. ed. 8vo. Lips. 1815: cf. S. Ambros. de virgin., lib. i. cap. 4. tom. ii. col. 151 A.]

being commanded by a tyrant to eat them, she said, she would rather tell than eat them: but in fine she cut out her tongue, because she would neither taste nor tell. Thus Seneca[c] tells of a prisoner, that being to be exposed to beasts in the theatre, he broke his neck in the spondels of the wheel upon which he was drawn to the spectacle; and of another that died by a pertinacious holding of his breath. But that of Samson[d], and Saul[e], and Razis[f], are also brought into example; and are alleged to prove that a man may a few hours or days hasten his death, if by so doing he takes the lighter part. S. Chrysostom[g] tells of S. Pelagia, *Pelagia virgo quindecim annos nata sponte sibi necem maturavit: parata quidem erat ad cruciatus tormentaque et omne suppliciorum genus perferendum, sed metuebat tamen ne virginitatis coronam perderet;* 'being a virgin of fifteen years of age, of her own accord she hastened death unto herself: she was indeed ready to have suffered all sorts of most exquisite torments, but she was not willing to lose the crown of her virginity.' Upon which fact of hers he thus discourses, 'Hence you may perceive, that the lust of the wicked hangmen struck fear into Pelagia, and therefore from their injurious lust the maiden removed and snatched herself: for if she might have kept the crown of her virginity, and receive the crown of martyrdom besides, she would not have refused the judgment-seat; but because it was altogether necessary to lose the one of them, she had a just cause by her own voluntary death to prevent so great an injury.' And S. Ambrose[h], writing to his sister Marcellina, expressly commends those virgin martyrs, who to prevent their ravishments did hasten their death by voluntary precipices or drowning, and particularly allows the fact of Pelagia. To which I add also S. Hierome[i], who though he gives express testimony to the rule, yet he excepts the case of chastity; *Non est nostrum mortem arripere, sed illatam ab aliis libenter excipere: unde et in persecutionibus non licet propria perire manu, absque eo ubi castitas periclitatur, sed percutienti colla submittere,* 'we must not snatch death with our own hands, but willingly receive it when it is imposed by others: and therefore in persecutions we must not die by our own hands, unless it be when our chastity is in danger,'

> —— heu quanto melius vel cæde peracta
> Parcere Romano potuit fortuna pudori[k]?

In other cases we must lay down our necks under him that strikes. And this seems reasonable, because as the emperor said[l], *Viris bonis*

[c] [Epist. lxx. tom. ii. p. 259.]
[d] [Judg. xvi. 30.]
[e] [1 Sam. xxxi. 4.]
[f] [2 Macc. xiv. 41.]
[g] [Hom. de Pelag., tom. ii. p. 585.]
[h] De virgin., lib. iii. [cap. 7. tom. ii. col. 182, 3.]
[i] In cap. i. Jonæ, in hæc verba, 'Mittite me in mare.' [tom. iii. col. 1478.]
[k] [Lucan., lib. ii. 517.]
[l] 'Quod si,' ff. Quod metus causa. [Digest., lib. iv. tit. 2. l. 8. col. 102.]

metum istum (pudicitiæ amittendæ) majorem esse debere quam ipsius mortis, 'he that fears to lose his chastity fears more justly than he that fears to lose his life.'

§ 5. To this I answer, that the case is indeed very hard; and every one in this is apt not only to excuse, but to magnify the great and glorious minds of those who to preserve their honour despised their life. And therefore when the Moscovites broke into Livonia, and in their sacking of the city Wenden used all manner of cruelties and barbarous immanities to men and women, filling all the streets and houses with blood and lust; a great many of the citizens running to the castle, blew up themselves with their wives and children, to prevent those horrors and shames of lust which they abhorred more than death. Now Laurentius Müller[m], who tells the story, says, that although the preachers of Riga did in their pulpits condemn this act of the women and maidens: yet the other Livonians and the Moscovites themselves did not only account it sad and pitiable, but excellent and admirable. And so the author of the books of Maccabees[n] commends the fact of Razis as glorious and great: but yet this does not conclude it lawful; for it is upon no account lawful for a man of his own accord to kill himself.

§ 6. S. Austin[o] denies to him the praise of magnanimity; *Magis enim mens infirma deprehenditur, quæ ferre non potest duram corporis sui sanitatem, vel stultam vulgi opinionem,* 'it is not greatness, but littleness of spirit, it is either impatience or pride that makes a man kill himself to avoid trouble to his body, or dishonour to his name amongst fools.' I suppose he had it from Josephus[p], who excellently and earnestly proves it to be cowardice to lay violent hands upon ourselves; and both of them might have it from Aristotle[q], who will not allow it so much as to be brave and magnanimous for a man to kill himself for the avoiding of any evil, τὸ δὲ ἀποθνήσκειν φεύγοντα πενίαν ἢ ἔρωτα ἤ τι λυπηρὸν, οὐκ ἀνδρείου, ἀλλὰ μᾶλλον δειλοῦ, 'to die that we may avoid poverty, the torments of love, or any evil affliction whatsoever, is not the part of a valiant man, but of a coward.'

Hostem cum fugeret, se Fannius ipse peremit.
Hic, rogo, non furor est, ne moriare mori[r]?

'Fannius being pursued by the enemy, killed himself for fear.' It may be cowardice to die in some cases; and to die to preserve our chastity is to sin to avoid a sin, like Fannius his case of fear,

——— mortisque timorem
Morte fugant, ultroque vocant venientia fata[s]:

[m] Histor. septentr. [p. 46: quoted with other authorities by G. S. Treuer, einleitung zur Muscovitischen historie, p. 150. 8vo. Leipzig. 1720.]

[n] [2 Macc. xiv. 42.]

[o] Exposit. in Johan., tract. li. [tom. iii. part. 2. col. 637.] lib. xix. de civit. Dei, [cap. 4. tom. vii. col. 548.]

[p] Bell. Judaic., lib. iii. cap. 25. [al. 7. p. 1144.]

[q] Lib. iii. ethic. cap. 11. [tom. ii. p. 1116.] et lib. v. cap. ult. [p. 1138.]

[r] [Mart., lib. ii. epigr. 80.]

[s] Ovid. metamorph., lib. vii. [604.

or as S. Chrysostom's expression is *πρὸ τοῦ ναναγίου ναναγίῳ περιβάλλειν σαυτὸν, καὶ πρὶν ἢ δέξασθαι πληγὴν ἀποθνήσκειν τῷ δέει*, 'to die before the wound is given, and to leap into the sea for fear of shipwreck:' it is to do violence to our body to preserve it chaste, to burn a temple to prevent its being profaned. And therefore it is no just excuse to say the virgin-martyrs did it lest they should lose their crown of virginity: for though I shall not urge the example of Abraham, who rather ventured his wife's chastity than his own life; yet this I say, that she that loses it by violence is nevertheless a virgin before God, but much more a martyr. But then if any one can suppose it fit to be objected, that if they lost their material virginity, there was danger lest while they were abused they should also be tempted, and consent: I suppose it will be sufficient to answer, that a certain sin is not to be done to avoid an uncertain; and yet further, that this could not be considerable in the case of the martyrs: for besides that it is supposed that they were infinitely fortified by the grace of God, their austere lives and holy habits, the rare discourses of their spiritual guides, their expectations of particular crowns, the great reputation and honour of virgins, and the spirit of chastity, which then very much prevailed; besides all this, I say, they had then (particularly S. Pelagia, and the virgins which S. Ambrose speaks of, had then) the sentence of death not only within them but upon them; and the immediate torments which they expected after ravishments, were a very competent mortification for any such fears. And therefore as we should call it cowardice or impatience for a man to kill himself that he may die an easy death, and prevent the hangman's more cruel hands; so it is a foolish and unreasonable caution, and a distrust of the sufficiency of the divine grace, to rush violently to death lest we should be dishonoured or tempted in another instance: and it is not bravery, but want of courage; *μαλακία γὰρ τὸ φεύγειν τὰ ἐπίπονα*, 'it is softness and effeminacy by death to fly the labours of a sadder accident,' says Aristotle[t]. But be it this or not this, it is certain it is something as bad.

§ 7. 1) It is directly against the commandment: 'and it is not for nothing that in all the canonical books we find no precept, no permission from God,' saith S. Austin[u], *ut vel ipsius adipiscendæ immortalitatis, vel ullius carendi cavendive mali causa nobismet ipsis necem inferamus. Nam et prohibitos nos esse intelligendum est, ubi lex ait, Non occides:* 'that either for the gaining of immortality itself, or for the avoiding of any evil, we should kill ourselves.' It is something like this which Aristotle[x] says, *τὰ μὲν γάρ ἐστι τῶν δικαίων, τὰ κατὰ πᾶσαν ἀρετὴν ὑπὸ τοῦ νόμου τεταγμένα· οἷον οὐ κελεύει ἀποκτιννύναι ἑαυτὸν ὁ νόμος· ἃ δὲ μὴ κελεύει ἀπαγορεύει·*

[t] [ubi supra.]

[u] Lib. i. cap. 20. de civit. Dei. [tom. vii. col. 20 B.]

[x] Eth. Nic., lib. v. cap. 15. [tom. ii. p. 1138.]

'those things which the decrees have appointed agreeable to virtue those are to go for laws; as for example, the law does not command any man to kill himself, and because the law does not command, therefore it does forbid:' that is, because the law commands no man (though he be condemned) to kill himself, therefore the law forbids him to do it to himself; the law will not make a man executioner even of her sentence, therefore she permits him not to execute his own. But S. Austin adds beyond this, 'For then we were forbidden to do it, when God said, Thou shalt do no murder.' And therefore it is observable that although God said, Thou shalt not bear false witness against thy neighbour; yet he did not in this commandment add that clause of *contra proximum*, nor in that of adultery; intimating that we must neither pollute nor destroy our own bodies any more than the body of our neighbour.

§ 8. 2) To prevent the hand of justice or of tyranny in striking is sometimes to prevent the hand of God in saving, and is an act of desperation against the hopes of a good man, and the goodness of God: for help may come in the interval. Caius the emperor commanded some to be put to death whom he presently after infinitely wished to have been alive; the haste of the executioners destroyed the men more than the rage of the prince: and it is all one if the man himself be hasty. And Pontanus[y] tells that when Angelus Ronconius was accused to pope Nicolas the fifth that he had given way to Aversus whom the pope's forces had enclosed, and gave leave to him to pass over Tiber, the pope commanded him to be proceeded against according to law; but when he rose in the morning, and told his ministers he would more maturely consider the cause of Ronconius, they told him he was that very night put to death, which caused extreme grief to the pope. Concerning a man's life all delay is little enough: and therefore for himself to hasten it is against prudence, and hope, and charity.

§ 9. 3) The argument of Lactantius[z] is very good; *Si homicida nefarius est qui hominis extinctor est, eidem sceleri obstrictus est qui se necat*, 'if he that kills another is a wicked homicide, so also is he that kills himself.' Nay, he is worse, said S. Chrysostom[a]. And this,—besides that it relies upon the unlimited, indefinite commandment which must be understood universally but where God hath expressly set its limits; and though He hath given leave to public magistrates to do it, who therefore are not under that commandment, yet because He hath not given leave to ourselves to do it to ourselves, therefore we are under the commandment:—besides this, I say, it relies also upon this reason, that our love to ourselves is the measure of charity to our neighbours; and if we must not kill our neighbour because we must love him as ourself, therefore neither

[y] [De obedientia, cap. 15.]
[z] Lib. iii. instit. cap. 18. [tom. i. p. 239.]
[a] In epist. ad Gal., cap. i. [tom. x. p. 664 C.]

must we kill ourselves, for then we might also kill our neighbour, the reason and the measure, the standard and the proportion being taken away.

§ 10. 4) To put ourselves to death without the command of God or His lieutenant is impiety and rebellion against God; it is a desertion of our military station, and a violation of the proprieties and peculiar rights of God, who only hath power over our lives, and gives it to whom He pleases: and to this purpose Cicero[b] commends that saying of Pythagoras, *Ne quis injussu imperatoris, id est, Dei, de præsidio et statione vitæ discedat;* God is our general, and He hath commanded to us our abode and station, which till He call us off must not be deserted: and the same doctrine he recites out of Plato[c], *Piis omnibus retinendum esse animum in custodia corporis, nec injussu ejus a quo ille est datus ex hominum vita migrandum esse, ne munus humanum assignatum a Deo defugisse videamur.* The reason is very good: God gave us our soul and fixed it in the prison of the body, tying it there to a certain portion of work, and therefore we must not without His leave go forth, lest we run from our work that God hath commanded us. Josephus[d] says it is like a servant's running away from his master's service: *Et servos quidem fugientes ulcisci justum creditur, quamvis nequam dominos fugerint: ipsi vero fugimus Deum et optimum Deum; impie facere non videbimur?* 'if servants fly from their cruel masters they are justly punished; shall it not be accounted impiety to fly from our good God, our most gracious Master?' And therefore Brutus[e] condemned the fact of Cato his father-in-law, ὡς οὐχ ὅσιον οὐδ' ἀνδρὸς ἔργον ὑποχωρεῖν τῷ δαίμονι, καὶ μὴ δέχεσθαι τὸ σύμπιπτον ἀδεῶς, ἀλλ' ἀποδιδράσκειν, 'it was neither manly nor pious to sink under his fortune, and to fly away from those evils which he ought to have borne nobly.' And therefore the Hebrews called dying ἀπολύεσθαι, 'a dismission:' "Lord, now lettest Thou Thy servant depart in peace," said old Simeon[f]; *Nunc dimittis.* When God gives us our pass, then we must go, but we must not offer it an hour before: he that does otherwise is, α) ungrateful to God, by destroying the noblest of His works below; β) impious, by running from His service; and γ) distrustful of His providence. *Nisi Deus is, cujus hoc templum est omne quod conspicis, istis te corporis custodiis liberaverit, in cœlum aditus tibi patere non potest,* said Cicero[g], 'unless God open the gate for you, you can never pass from the prison of the body, and enter into heaven.' And the same is affirmed by Hierocles[h], which I tell for the strangeness of it; for he was a stoic, yet against the opinion of his sect he spake on the behalf of reason and religion: and this is the christian sense,

[b] Lib. de senect. [cap. 20.]
[c] Somn. Scip. [cap. 5.] Vide Platonem in Phædone. [cap. 16. tom. v. p. 152, 5.]
[d] [ubi supra, p. 90.]
[e] [Plutarch. in vit. Bruti, cap. 40. tom. v. p. 416.]
[f] [Luke ii. 29.]
[g] [Somn. Scip., cap. 5; cf.] lib. i. Tuscul. [quæst. cap. 30.]
[h] Ad carm. aur. Pyth. [p. 68.]

Δεῖ γὰρ δεδέσθαι μέχρις ἐκλύσῃ Θεὸς,

said S. Gregory Nyssen[i], 'we must stand bound till God untie us.'

§ 11. 5) For a man to kill himself is against the law, and the voice, and the very prime inclination of nature. Every thing will preserve itself: "No man hateth his own flesh, but nourisheth and cherisheth it," saith the apostle[k]: and therefore generally all nations, as taught by the voice of nature, by the very first accents which she utters to all men, did abhor the laying violent hands upon themselves. When some of the old Romans hanged themselves to avoid the slavery that Tarquinius Superbus imposed upon them of making public draught-houses, he commanded the dead bodies to be crucified, says Servius[l]. So did Ptolemy to the body of Cleomenes who had killed himself[m]; and Aristotle[n] says it was every where received, that the dead bodies of self-murderers should be disgraced some way or other; ἀταφίᾳ ὑβρίζειν τὸν νεκρὸν, by denying them burial, that was the usual way. So did the Milesians[o] to their maidens who hanged themselves, they exposed their bodies to a public spectacle: and Strabo[p] tells that the Indian priests and wise men blamed the fact of Calanus, and that they hated those hasty deaths of impatient or proud persons. *Alieno scelere quam meo mori malo,* said king Darius[q], 'I had rather die by the wickedness of another than by my own.'

§ 12. 6) Aristotle says that they who kill themselves (hastening their own death before God or the public commands them) are injurious to the commonwealth; from whose service and profit they subtract themselves if they be innocent, and if they be criminal, they withdraw themselves from her justice: ἀδικεῖ ἄρα· ἀλλὰ τίνα; ἢ τὴν πόλιν; . . . καί τις ἀτιμία πρόσεστι τῷ ἑαυτὸν διαφθείραντι, ὡς τὴν πόλιν ἀδικοῦντι[r], 'he that kills himself does wrong to the city; and is after death disgraced as an unjust person to the public.'

§ 13. Now then to the examples and great precedents above mentioned I shall give this answer,

1) That Samson is by all means to be excused, because S. Paul[s] accounts him in the catalogue of saints who died in faith; and therefore S. Austin[t] says he did it by a peculiar instinct and inspiration of the Spirit of God. But no man can tell whether he did or no: and therefore I like that better which Peter Martyr says in this enquiry; 'He did primarily and directly intend only to kill the enemies of God, which was properly his work to which he was in his

[i] Iamb. 18.
[k] [Ephes. v. 29.]
[l] In xii. Æneid. [603, ex Cassio Hemina.]
[m] [Plutarch. in vit. Cleom., cap. 38. tom. iv. p. 605.]
[n] [Ethic. Nic., lib. v. cap. 15. tom. ii. p. 1138.]
[o] [Plut. de virt. mulier., tom. vii. p. 24; Aul. Gell. noctt. Att., lib. xv. cap. 10.]
[p] [lib. xv. tom. ii. p. 1017.]
[q] [Curt. lib. v. cap. 12.]
[r] [Ethic. Nic., lib. v. cap. 15. tom. ii. p. 1138.]
[s] [Heb. xi. 32.]
[t] Lib. i. de civit. Dei, cap. 21. [tom. vii. col. 21.] et 26. [col. 24.]

whole calling designed by the Spirit of God: but that he died himself in the ruin was his suffering, but not his design; but like a soldier fighting against his enemies at the command of his general undertakes the service though he knows he shall die for it. Thus do the mariners blow up themselves in a sea-fight when they can no otherwise destroy the enemy; they do it as ministers of justice, and by command; else they are not to be excused: and he that gives it must take care it be just and reasonable.' Thus did the brave Eleazar Habaran[u], the brother of Judas Maccabæus: he supposing their grand enemy Antiochus to be upon a towered elephant goes under the beast and kills him, who with his fall crushed the brave prince to death; he intended not to kill himself, but to kill Antiochus he would venture himself or suffer death.

§ 14. 2) The fact of Saul is no just precedent, it looks like despair: but the Hebrews say that it is not lawful for any man to die by his own hands, unless the prolongation of his life be a dishonour to God, and to a cause of religion; and upon this account they excuse both Saul and Samson, for they knew that if they should fall or abide respectively in the hands of scorners, the dishonour of their persons would disparage the religion, and reach to God. So they. But this is not right: for we only are to take care of the laws of God and of His glory in the ways of His own appointment; for extraordinaries and rare contingencies, let Him alone, He will secure His own glory.

§ 15. 3) For Razis, Lipsius says it is a question whether it was well or ill done; and who please to see it disputed may read Lucas Brugensis on one side, and Nicolaus de Lyra upon the other. For my own part, I at no hand believe it fit to be imitated; but concerning what brave and glorious persons do, and by what spirit they acted, I am not willing to give hasty sentence: for there are many secrets which we know not; but we are to follow our rule, and not to trust any spirit of which we are not sure it is from God.

§ 16. 4) But of that which is most difficult I have already spoken something, but shall add more: for it is a pitiable case that virtuous women, highly sensible of their honour, zealous for chastity, despisers of life, should not as well receive the reward of their suffering to preserve the interest of chastity, as of any other grace; especially since they choose death rather than shame, and would not willingly choose either, but being forced, run to death for sanctuary. It is true, it is much to be pitied; but that's all: *ac per hoc et quæ se occiderunt, ne quicquam hujusmodi paterentur, quis humanus affectus eis nollet ignosci?* 'Every man,' says S. Austin, 'will pity, and be ready to excuse, or to wish pardon to such women who killed themselves to preserve their honour.' Cicero tells[x] of certain noble virgins that threw themselves into pits to avoid the shame of their enemies' lust:

[u] [ὁ Σαυαράν, LXX.—1 Macc. vi. 43.]
[x] Orat. de provinciis consularibus. [cap. 3.]

and S. Hierome[x] tells of seven Milesian virgins, who, to prevent the rudeness of the Gauls that destroyed all Asia, laid violent hands upon themselves. The Greek epigram[y] mentions them with honour, but tells but of three:

Παρθενικαὶ τρισσαὶ πολιήτιδες, ἃς ὁ βιαστὸς
Κελτῶν εἰς ταύτην μοῖραν ἔτρεψεν Ἄρης.
Οὐ γὰρ ἐμείναμεν αἷμα τὸ δυσσεβὲς, οὐδ' ὑμεναίου
Νυμφίον, ἀλλ' ἀΐδην κηδεμόν' εὑράμεθα.

They chose a sad death before a mixture with the lustful blood of the Galatians. And the Jews[z] tell of a captive woman of their nation, who being in a ship and designed to ravishment, asked her husband if the bodies of them that were drowned in the sea should rise again: and when he had said they should, she leaped into the sea. And among the Christians that did so there were many examples. Divers women of Antioch under Dioclesian[a]; more under Chosroes the Persian[b]; Sophronia under Maxentius[c]; S. Pelagia before mentioned, and divers others. These persons had great advocates; but I suppose it was upon the stock of pity and compassion that so much bravery should be thrown away upon a mistake: and therefore I find that S. Chrysostom, who commended this manner of death upon the account of chastity, yet is not constant to it, but blames it in his commentaries upon the Galatians[d]: and the third council of Orleans[e] commanded that the oblations of them that died by the hands of justice should be received, *Si tamen non ipsi sibi mortem probentur propriis manibus intulisse,* 'always provided that they did not prevent the hand of justice, that they did not lay violent hands upon themselves.' I end this with the saying of Procopius[f], which is a just determination of the case in itself. Βίαιος καταστροφὴ ἄχρηστος καὶ ἄνοια προπετὴς, τὸ δὲ εἰς θάνατον θράσος ἀνόητον, τοῦ δραστηρίου πρόσχημα οὐκ εὐπρεπὲς τοῖς γε σώφροσιν εἶναι δοκεῖ, 'a violent death, or a death hastened by our own hands, is a thing unprofitable, and full of foolish violence; and since it wants prudent counsel, it is by wise men judged to be but the image and hypocrisy of valour and magnanimity.' To which he adds, καί τοι καὶ τοῦτο ἐκλογίζεσθαι χρὴ, μή τι δόξητε εἰς τὸ θεῖον ἀγνωμονεῖν, 'this also ought to be considered, that no man ought to be impious or ungrateful towards God.' This is the definition of the case. But then as to the persons of them that did so, I have nothing to say but this, that they ought not to be drawn into example: but for the whole, it was modest and charitable which was decreed by the French

[x] Adv. Jovinian. [lib. i. tom. iv. part. 2. col. 186.]
[y] [Anyt.] lib. iii. ἀνθολογ. εἰς νέους καὶ νέας. [Jacobs, anthol. Gr., tom. i. p. 133.]
[z] [Grot. de jur. bell., ii. 19. § 5. not.]
[a] [Fulgos., lib. vi. cap. 1.]
[b] [Procop. Pers., lib. ii. cap. 8. fin.]
[c] [Euseb. H. E., lib. viii. cap. 14. Zon. annal., lib. xii. cap. 33.]
[d] In Gal. i. 4. [tom. x. p. 664. C.]
[e] [Concil. Aurel. iii. al. ii. can. 15. tom. ii. col. 1175.]
[f] Gothicor., lib. iv. [cap. 12. tom. i. p. 598 C. ed. fol. Par. 1662.]

capitulars[g], 'Concerning him who hath killed himself, it is considered, that if any one out of pity or compassion will give alms for their souls (so was the custom of those times) let him give, and say prayers and psalms, but not celebrate the solemn sacrifice for them;' *quia incomprehensibilia sunt judicia Dei, et profunditatem consilii ejus nemo potest investigare,* 'because the judgments of God are incomprehensible, and the depth of His counsels no man can fathom.' This was more gentle than that of Virgil[h],

> Proxima deinde tenent mœsti loca qui sibi lethum
> Insontes peperere manu, lucemque perosi
> Projecere animas. Quam vellent æthere in alto
> Nunc et pauperiem, et duros perferre labores.

He appointed a sad place in hell for them that so cheaply out of impatience, or to avoid a great trouble, threw away their souls. Fain would they now return to light, and joyfully would change their present state with all the labours and shames which they with hasty death so earnestly declined. But he knew nothing of it, neither do I, only that it is not lawful. But how they shall fare in the other world who upon such great accounts are tempted, is one of God's secrets, which the great day will manifest. If any man will be pleased to see more against it, he may find it in S. Austin[i], Hegesippus[k], Nicephorus Blemmidas[l], Heliodorus[m], and divers others, well collected by Fabrot in his fifth exercitation[n].

RULE IV.

HE THAT HATH SUFFERED THE PUNISHMENT IS NOT DISCHARGED IN CONSCIENCE UNLESS HE ALSO REPENT OF THE DISOBEDIENCE.

§ 1. THIS rule is in effect the same with the first rule of the first chapter of this book: but because it is usually discoursed of also under the head of penal laws, and there are many persons who, when they have broken the law, and have suffered punishment, think themselves discharged, and because it ministers some particularities of its own, I have therefore chosen distinctly to consider it.

[g] [Capit. Carol. Magn.,] lib. vi. cap. 70. [Baluz. capit. reg. Franc., tom. i. col. 933. ed. fol. Par. 1677.]

[h] Æneid. lib. vi. [434.]

[i] Lib. i. de civit. Dei, capp. 20, 1, 6. [tom. ii. col. 20-4.] epist. lxi. ad Dulcit. [al. cciv. tom. ii. col. 766.] et lib. i. contr. epist. Gaudent., cap. 23. [tom. ix. col. 648.]

[k] Excid. Hierosol., lib. iii. cap. 17. [p. 338, sqq. ed. 8vo. Colon. 1559, ex Josepho.]

[l] Epitom. log., cap. 4. [p. 28. ed. 12mo. August. Vindel. 1605.]

[m] Æthiop., lib. ii. [cap. 1. p. 53. ed. 8vo. Par. 1804.]

[n] [pp. 80. sqq. ed. 8vo. Par. 1639.]

§ 2. In this enquiry penal laws usually are distinguished into laws purely penal, and mixed. *α*) Laws purely penal are such which neither directly command nor forbid, but impose a penalty upon him that does or omits an action respectively. So Moses[o] to the children of Israel, "If a man shall steal an ox or a sheep, and kill it or sell it; he shall restore five oxen for one ox, and four sheep for one." *β*) A mixed penal law is when with the precept or prohibition the penalty is adjoined: so said God[p], "Ye shall not hurt the widow or the fatherless; if ye hurt them, they shall cry unto Me, and I will hear their cry, and My fury shall be kindled, and I will strike you with the sword, and your wives shall be widows, and your children fatherless." And of the same nature is that canon of the council of Agatho[q], 'We do by a special order command all secular persons to hear the whole divine service upon the Lord's day, so that the people presume not to go forth before the blessing of the priest: but if any man shall presume to do so, let him be publicly punished by the bishop.' *γ*) Other laws are purely moral, that is, preceptive without any penalty. This distinction Silvester derides as childish, and of no use; but others deride him: but whatever use it can be of to other purposes, it is of little in this. For whether the penalty be annexed or no, it obliges to penalty[r]; and therefore whether it be preceptive or no, it also obliges to duty: and we see it in ocular demonstration in divers of the levitical and moral laws of God, which sometimes are set down in the style of laws purely penal, and the same laws in other places are penal and prohibitive.

§ 3. 1) But why are punishments decreed in laws? are they for the obedient, or for the disobedient? for good men, or for bad? Certainly, for them that do not obey. Now they that obey not, do well or ill, or it is indifferent whether they do or no: if they do well they are to be rewarded, and not punished; if the thing after the sanction be still indifferent, why shall he suffer evil that does none? But the case is plain, that in all just governments the punishment is decreed in the laws, that the law may be obeyed; and unless it be equally good to the prince that his subjects obey or be punished, that is, unless it be all one to him whether they be happy and advantaged, or miserable and punished, and that he cares not whether the subject receives the good or the evil of the law, it cannot be supposed that when the subject is punished, the law is satisfied in its first intention.

§ 4. 2) Add to this, if suffering the punishment does satisfy the law, then the subject is not tied to obey for conscience sake, but only for wrath, expressly against the apostle; and then laws would quickly

[o] [Exod. xxii. 1.]
[p] [ibid. 22-4.]
[q] [Can. xlvii. tom. ii. col. 1003.] can. 'Miss.' de consecrat., dist. i. [can. 64. col. 2075.]
[r] Tacite permissum est quod sine ultione prohibetur.—Tertull. adv. Marc., lib. i. [cap. 16. p. 379 A.]

grow contemptible: for the great flies that break through the cobweb-lawns of penal laws, would be both innocent and unconcerned; innocent, as not being tied in conscience, and unconcerned, as having many defensatives against the fine.

§ 5. 3) The saying therefore of S. Austin[s] hath justly prevailed, *Omnis pœna si justa est, peccati pœna est, et supplicium nominatur*, 'every penalty is relative to an offence, and is called punishment.' And there can be no reason given why in laws there are differing punishments assigned, but that they be proportionable to the greatness of the fault. It follows therefore, that whoever is obliged to suffer the punishment of the law, do ask God's pardon and the king's, for having done a sin by which only he could be obliged to punishment. *Reatus* or 'guilt,' both in divine laws and in human, is an obligation to punishment: for *reatus pœnæ* and *reatus culpæ* differ but as the right and left hand of a pillar; it is the same thing in several aspects and situations. And Lucius Neratius[t] was a fool and a vile person; and having an absurd humour of giving every man he met a box on the ear, he caused a servant to follow him with a bag of money, and caused him to pay him whom he had smitten twenty-five *asses*, a certain sum which was by the law of the twelve tables imposed upon him that did an injury: but considered not that all that while he was a base and a trifling fool for doing injury to the citizens.

§ 6. This rule holds in all without exception: it seems indeed to fail in two cases, but it does not; only the account of them will explicate and confirm the rule.

§ 7. 1) In actions which are not sins, but undecencies, or unaptnesses to a state or office and action, the evils that are appendant to them are also but *quasi pœnæ*, half punishments: such as the irregularity that is incurred by a judge that gives sentence in a cause of blood; he is incapable of entering into holy orders by the ancient laws of the church. A butcher is made incapable of being of the inquest of life and death: which incapacity is not directly a punishment, any more than it is a sin to be a butcher; but certain persons are without their fault declared unfit for certain states or employments. Now this confirms the rule, for still the proportion is kept; and if it be but like a fault, the consequent of it is but like a punishment. And if at any time these appendages are called punishments, it is by a *catachresis* or an abuse of the word, and because of the similitude in the matter of it. So we say, the righteous are punished, that is, they suffer evil for their own trial, or for the glory of God: and so it is in the law, *Sine culpa, nisi subsit causa, non est aliquis puniendus*, 'no man is to be punished without his fault, unless there be cause for it:' that is, no man is to suffer that evil which in other cases is really a punishment, and in all cases looks like one. And

[s] Lib. i. retract., c. 9. [tom. i. col. 14 E, ex libro 'de libero arbitrio,' lib. iii. cap. 18. tom. i. col. 631 B.]
[t] A. Gellius, lib. xx. [cap. 1.]

from hence comes that known rule, and by the same measure is to be understood, *Etsi sine causa non potest infligi pœnâ, potest tamen sine culpa.* The word *pœna* is taken improperly for any evil consequent or adjunct.

§ 8. 2) This seems to fail in laws that are conditional or conventional; such as are when the prince hath no intention to forbid or command any thing, but gives leave to do it, but not unless you pay a fine. Thus if a prince commands that none shall wear Spanish cloth, or ride upon a mule, or go with a coach and six horses, under the forfeiture of a certain sum; this sum is a punishment, and the action is a fault: but if the subjects shall ask leave to do it, paying the sum, then it is a conditional or conventional law, and obliges not to obedience, but to pay the fine. For these laws are not prohibitive, but concessory; and there is no sign to distinguish them from others, but the words of the law, the interpretation of the judges, and the allowed practice of the subjects.

§ 9. Of the same consideration are all promises and vows and contracts which are made with a penalty annexed to the breakers. The interested person is first tied to keep his word: if he does not, he sins. But if he does sin he must therefore pay the penalty: and if he does not he sins twice. *Haud scio,* says Cicero[u], *an satis sit eum qui lacessierit, injuriæ suæ pœnitere.* It is not enough for him to repent of the injustice, but he must also pay his fine; and yet that does not acquit him from the first fault, but prevents a second. He that so contracts is twice obliged, and the later fault is paid by the penalty, and the first fault by repentance and that together.

RULE V.

IT IS NOT LAWFUL FOR A GUILTY PERSON TO DEFEND HIMSELF BY CALUMNY OR A LIE FROM THE PENALTY OF THE LAW, THOUGH IT BE THE SENTENCE OF DEATH.

§ 1. ALL the wisdom of mankind hath ever been busy in finding out and adorning truth, as being that in which we are to endeavour to be like God, who is truth essentially: and therefore Pythagoras in Ælian[v] did say, that the two greatest and most excellent works that God gave to mankind to do, are the pursuits of truth and charity; for these are excellencies for which God himself is glorious before men and angels. The Persian *magi* say that Oromagdes (so they called the greatest of their gods) was in his body like light, and his soul was like truth; and that therefore by truth we are like to

[u] Lib. i. offic. [cap. 11.] [v] Lib. xii. variar. hist. [cap. 59.]

God, but by a lie we are made mortal, says Plato[w]. *Veritas, quomodo sol illuminans colores et album et nigrum ostendit, qualis sit unusquisque eorum, sic ipsa quoque refellit omnem sermonis probabilitatem; merito a Græcis quoque acclamatum est, principium magnæ virtutis est regina veritas,* 'as the sun gives light to us, and distinction to black and white, so does truth to speech; and therefore the Greeks did rightly affirm that truth is the beginning of the great virtue,' that is, of perfection, or virtue heroical, said S. Clement[x].

§ 2. This is true in all regards: but the question is, whether truth can be practised at all times. For God speaks truth because it is His nature, and He fears no man, and hath power directly to bring all His purposes to pass: but the affairs of men are full of intrigues, and their persons of infirmity, and their understandings of deception; and they have ends to serve which are just, and good, and necessary; and yet they cannot be served by truth, but sometimes by error and deception. And therefore the ancients described Pan, who was the son of Mercury, their god of speech, with the upper part like a man, and the lower part like a beast, rough, hairy and deformed; not only to signify truth and falsehood, and that truth is smooth, even and beauteous, and a lie is rough, ugly, deformed, and cloven-footed, (*quia mendacii multiplex divortium,* says one,) but to represent, that in our superior faculties, and our intercourse with the power above us, we must speak truth, but that in our conversation with men below, it is necessary sometimes by a lie to advantage charity, by losing of a truth to save a life. Here then is the enquiry,

1) Whether it can in any case be lawful to tell a lie.

2) Whether it be lawful to use restrictions and mental reservations, so that what we speak, of itself is false, but joined to something within is truth.

3) Whether and in what cases it is lawful to equivocate, or use words of doubtful signification with a purpose to deceive, or knowing that they will deceive.

4) Whether it be lawful by actions and pretences of actions to deceive others for any end; and in what cases it is so.

QUESTION I.

Whether it can in any case be lawful to tell a lie[y].

§ 3. To this I answer, that the holy scriptures of the Old and New testament do indefinitely and severely forbid lying. "A righteous man hateth lying," saith Solomon[z]; and Agur's[a] prayer was, "Remove from me vanity and lies." "For the Lord will destroy

[w] Lib. vi. de rep. [vid. cap. 5. tom. vii. p. 11.]

[x] Clem. Alex. strom., lib. vi. cap. 4. [al. 11. p. 781.]

[y] [On this question compare generally Grotius de jure belli et pacis, lib. iii. cap. 1.]

[z] [Prov. xiii. 5.]

[a] [chap. xxx. 8.]

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them that speak lies[b]." And our blessed Saviour[c] condemns it infinitely by declaring every lie to be of the devil: "When he speaketh a lie he speaketh of his own, for he is a liar and the father of it." "Lie not therefore one to another," saith S. Paul[d]: "For all liars shall have their part in the lake which burneth with fire and brimstone[e]." Beyond these things nothing can be said for the condemnation of lying.

§ 4. But then lying is to be understood to be something said or written to the hurt of our neighbour, which cannot be understood otherwise than to differ from the mind of him that speaks. *Mendacium esse petulanter aut cupiditate nocendi aliud loqui, seu gestu significare, et aliud sentire:* so Melancthon[f]: 'to lie is to deceive our neighbour to his hurt.' For in this sense a lie is naturally and intrinsically evil; that is, to speak a lie to our neighbour is naturally evil. Not because it is different from an eternal truth, for every thing that differs from the eternal truth is not therefore criminal for being spoken, that is, is not an evil lie: and a man may be a liar though he speaks that which does not differ from the eternal truth; for sometimes a man may speak that which is truth, and yet be a liar at the same time in the same thing. For he does not speak truly because the thing is true; but he is a liar because he speaks it when he thinks it is false. That therefore is not the essence or formality of a lie. *Vehementer errant qui tradunt orationis esse proprium significare verum necessarium,* said Scaliger[g]: a man may be a true man though he do not always speak truth. If he intends to profit and to instruct, to speak probably and usefully, to speak with a purpose to do good and to do no evil, though the words have not in them any necessary truth, yet they may be good words. Simonides and Plato say it is injustice and therefore evil: so does Cicero[h], and indeed so does the holy scripture, by including our neighbour's right in our speaking truth; it is *contra proximum,* it is 'against our neighbour;' for to himself no man can lie, and to God no man can lie, unless he be also an atheistical person, and believes that God knows nothing that is hidden, and so is impious when he says a lie. But a lie is an injury to our neighbour; who because he knows not the secret, is to be told that in which he is concerned, and he that deceives him abuses him.

§ 5. For there is in mankind an universal contract implied in all their entercourses, and words being instituted to declare the mind, and for no other end, he that hears me speak hath a right in justice to be done him, that as far as I can what I speak be true; for else he by words does not know your mind, and then as good and better not speak at all. *Humanæ aures verba nostra talia judicant, qualia foris sonant: divina vero judicia talia ea audiunt, qualia*

[b] [Ps. v. 7.]
[c] [John viii. 44.]
[d] [Col. iii. 9.]
[e] [Rev. xxi. 8, 27.]
[f] [Definit. appell., tom. i. fol. 356 b.]
[g] [Poet., lib. vii. cap. 2.]
[h] [De offic., lib. iii. cap. 16.]

ex intimis proferuntur[i]. Though God judges of our words by the heart, yet man judges of the heart by the words; and therefore in justice we are bound to speak so as that our neighbour do not lose his right which by our speaking we give him to the truth that is in our heart. And of a lie thus defined, which is injurious to our neighbour so long as his right to truth remains, it is that S.Austin[j] affirms it to be simply unlawful, and that it can in no case be permitted, *Nisi forte regulas quasdam daturus es quibus noverimus ubi oporteat mentiri, ubi non oporteat;* by way of confidence and irony: he condemns it all, 'unless peradventure,' says he, 'you are able to give us rules when a man may lie, and when he may not.' *Quod non est bonum, nunquam erit bonum*[k], that which is not innocent in itself can never be made so. But *vitia non sunt quibus recte uti licet*[l]; if it can in any case become good, it is not of its own nature evil: so that if a lie be unjust, it can never become lawful; but if it can be separate from injustice, then it may be innocent. Here then I consider,

§ 6. This right, though it be regularly and commonly belonging to all men, yet it may be taken away by a superior right supervening; or it may be lost, or it may be hindered, or it may cease upon a greater reason.

§ 7. 1) Therefore upon this account it was lawful for the children of Israel to borrow jewels of the Egyptians, which supposes a promise of restitution, though they intended not to pay them back again: God gave them commandment so to spoil them, and the Egyptians were devested of their rights, and were to be used like enemies.

§ 8. 2) It is lawful to tell a lie to children or to madmen, because they having no powers of judging, have no right to truth: but then the lie must be charitable and useful; because they are defended by the laws from injury, and therefore must not have a lie told them that can do them mischief. So that if a lie be told it must be such as is for their good; for though they have no right to truth, yet they have right to defence and immunity: and an injurious lie told to a child or madman is a sin, not because it deceives him, but because it deceives him to his prejudice. Quintilian[m] the great master of children says, *Utilitatis eorum gratia multa fingimus*, 'we feign many things to affright or allure children' to good and from evil respectively. And so do physicians to their patients, abusing the fancies of hypochondriacal and disordered persons into a will of being cured. Some will do nothing without a warrant; others are impatient of your converse unless you seem to believe them; and physi-

[i] S. Gregor., lib. xxvi. moral., cap. 7. [al. 10. tom. i. col. 818 A.]

[j] Epist. viii. ad Hieron. [al. xxviii. tom. i. col. 47 F.]

[k] [Οὐ γὰρ ὃ μὴ καλὸν οὐποτ' ἔφυ καλόν.] Eurip. in Phœniss. [814.]

[l] Lactant. instit., lib. vi. cap. 16. [tom. i. p. 478.]

[m] [Inst. orat., lib. xii. cap. i. § 38.]

cians can never apply their remedies unless they pretend warrants or compliances, and use little arts of wit and cozenage. This and the like were so usual, so permitted to physicians, that it grew to a proverb, *Mentiris ut medicus;* which yet was always to be understood in the way of charity, and with honour to the profession. But this any physician may not do, that is, not to every patient: for if the man be wise and can choose and can consider, he may not be cozened into his cure by the telling of a lie, because he is capable of reason, and therefore may choose what he hath a mind to, and therefore to cozen him is to injure him; and no man must commit a sin to do a good turn to a man against his will. And thus also in the case of children: their tutors or parents may not tell them every lie; they may not teach them lies and make them confident in vanities; but for their good, govern them as they can be governed.

Ut puerorum ætas improvida ludificetur[n],

all the world consents, when it is for their improvement. And to this is reduced the permission of inventing a witty fable, or telling a false story to gain ground upon him that believes a false opinion, and cannot any other way so easily be confuted. Thus when two Eutychian bishops[o], who believing that the two natures of Christ made but one, did consequently believe that the divinity did die as well as the humanity in the death of Christ, came to the court of a Saracen prince, he pretended great sorrow and consternation of mind at the receipt of some letters; into the contents whereof when they with some curiosity enquired, the prince with a seeming great sorrow told them he had received certain intelligence that the archangel Gabriel was dead. They to comfort him told him certainly it could not be true; and for their parts they did believe it to be impossible. 'O fathers,' said the prince, 'you do not believe it to be impossible that an archangel should, when you affirm that the divinity did die.' Such a fiction as this no wise man reproves; it is but like the supposing a false proposition in disputation, that upon that false supposition a true conclusion may be erected.

§ 9. 3) It is lawful to tell a lie to our neighbour by consent, provided the end be innocent or pious. Thus S. Chrysostom[p] and S. Hierome[q] say that S. Peter suffered himself to be reproved by S. Paul before the gentiles for too much compliance with the Jews: not that he did it seriously, but *κατ' οἰκονομίαν*, he acted a part by consent to establish christian liberty amongst the gentiles. I do not consent to the instance, because S. Paul tells it to the Galatians as a solemn story and a direct narrative, adding withal dogmatically, that S. Peter 'was to be blamed:' but the instance will serve rightly to illustrate this limitation of the rule. But thus the parties in a war may write exactly contrary to the truth; when they are understood

[n] Lucret. [i. 938.]
[o] Niceph. H. E., lib. xvi. [cap. 35.]
[p] [In Gal. ii. tom. x. p. 688.]
[q] [In loc., tom. iv. part. 1. col. 242.]

to what purpose, and when it is by consent. Because he who hath the right to truth hath quitted it, and his communication does serve the ends of society well enough, and his words, though they are not agreeable to his ordinary mind, yet they are made to be so by particular institution and design. Thus in besieged places they write letters of confidence and great ostentation of the strengths which they have not; when their parties have consented that they should do so for their just advantages.

§ 10. 4) To tell a lie for charity, to save a man's life, the life of a friend, of a husband, of a prince, of an useful and a public person, hath not only been done in all times, but commended by great and wise and good men.

Οὐ νέμεσις καὶ ψεῦδος ὑπὲρ ψυχῆς ἀγορεύειν·

'To tell a lie to save a life is no harm,' said old Pisander[r]. Thus the Egyptian midwives are commended because by their lie they saved the Israelitish infants. *O magnum humanitatis ingenium, O pium pro salute mendacium!* says S. Austin of them: it was an excellent invention of kindness, and a pious lie for the safety of the innocents: and S. Ambrose and S. Jerome commend them so, that they supposed them to receive eternal rewards. The same was the case of Rahab; to whom it should seem that Phinehas, who was one of the spies, had given instruction and made in her fair dispositions to tell a lie for their concealment. For when she had hidden Caleb, Phinehas said to her[s], *Ego sum sacerdos: sacerdotes vero, quippe angelorum similes, si volunt, aspectabiles sunt; si nolunt, non cernuntur.* But she made no use of that, but said directly they were gone away. Concerning which lie of hers S. Chrysostom[t] cries out, Ὦ καλοῦ ψεύδους, ὦ καλοῦ δόλου, οὐ προδιδόντος τὰ θεῖα, ἀλλὰ φυλάττοντος τὴν εὐσέβειαν, 'O excellent lie! O worthy deceit of her that did not betray the divine persons, but did retain piety!' Thus we find S. Felix[u] telling a lie to save his life from the heathen inquisitors.

Felicem sitit impietas ———
Felicemque rogant, Felix ubi cernitur: et non
Cernitur ipse, nec ipse vir est, cum sit prope, longe est.
———— persensit et ipse faventis
Consilium Christi, ridensque rogantibus infit,
Nescio Felicem quem quæritis: ilicet illi
Prætereunt ipsum; discedit at ille platea,
Illudente canes Domino frustratus hiantes.

They asked where Felix was; himself answered, that he knew not Felix whom they looked for: and yet no man finds fault with this escape. *Deceptio et mendacium semper alias mala res, tunc tantum*

[r] [Apud Stob. floril., tit. xii. 6.]
[s] [*Tanhuma* apud Masium, in critic. sacr. ad loc.]
[t] Homil. v. de pœnitent. [al. hom. vii. tom. ii. p. 335 A.]
[u] [Paulin.] Natali 5. S. Felicis. [Max. bibl. vet. patr., tom. vi. p. 276 E.]

sunt usui quando pro remedio sunt amicis curandis, aut ad vitandum apud hostes periculum; they are the words of Celsus in Origen; 'a lie is otherwise evil, only it is then useful when it is for remedy to cure the evils of our friends, or to avoid the evils from our enemies.' The same almost with the expression of Clemens Alexandrinus[x], who allows ψεύδεσθαι ἐν θεραπείας μέρει, 'to lie when it is a remedy.' So Lucian[y] amongst the heathens, *Qui cum usus postulat mentiuntur, venia nimirum hi, immo laude plerique eorum digni sunt; quicunque vel hostes fefellerunt, vel ad salutem tali quopiam pharmaco usi sunt in necessitatibus;* 'they are not only to be excused or pardoned, but to be commended, that lie, when they use it as a remedy or a medicine in the danger or necessities of our friends;' where also the scholiast does allow an officious lie. So we must use a lie, says Cassian[z], *quasi natura ei insit hellebori,* as a man uses hellebore: and he commends Archebius[a] for deceiving some persons with a charitable lie. It is therefore no wonder if Pliny[b] commends Arria the wife of Cæcinna Pætus for so often lying to her sick husband in the concealment of the death of their beloved boy; which she therefore hid lest the grief should extinguish her husband. In short, S. Austin[c] says that all the philosophers, as Plato, Xenophon, Lucian, the lawyers, the physicians, the rhetoricians and theologues, did affirm that it was sometimes lawful to tell a lie; that is, when it did good and no evil: Τὸ γὰρ ἀγαθὸν κρεῖττόν ἐστι τῆς ἀληθείας, said Proclus[d], 'for charity is better than truth,' and to save a man's life is better than a true story. The archbishop of Tyre[e] (as I remember) tells a story, that a malicious Saracen had secretly defiled one of the mosques or places of worship which the Turks have in Jerusalem. The fact was imputed to the Christians, who generally denying it, but having no credit with their enemies, were all presently dragged to the place of execution. Amongst them there was a young man pious and noble, who seeing all his brethren in a sad condition and himself equally involved, by an officious and a charitable lie took the fact upon himself, and confessed himself alone to be the doer of it, and that the rest knew nothing of it. Himself indeed was put to death with exquisite torments, but he saved the lives of all the rest; who, I doubt not, believed that young man to have in heaven a great reward for his piety, and no reproof for his innocent and pious lie: for in memory of this noble act the Christians in Jerusalem once a year marched with palms in their hands into the city to perpetuate the memory of that deliverance.

§ 11. 5) Now this may be better admitted in case the charitable

[x] [Strom., lib. vii. cap. 9. p. 863.]
[y] In philopseud. [cap. 1. tom. vii. p. 239.]
[z] [Collat. xvii. cap. 17. init. p. 502.]
[a] Lib. v. constit., cap. 37. [p. 100. ed. fol. Francof. 1722.]
[b] Lib. iii. [epist. 16.]
[c] Quæst. lxviii. in Levit. [tom. iii. part. 1. col. 519.]
[d] [In Platon. rep., p. 428.]
[e] [Guillerm. archiepisc. Tyr. de bell. sacr., lib. i. cap. 5. p. 8. ed. fol. Bas. 1549.]

lie be told to him to whom the good accrues; for then there is a leave justly presumed, and he that receives the good is willing to receive it with the loss of an useless or hurtful truth, and therefore there is no injustice done: as he that takes his neighbour's goods, for which he hath reason to believe his neighbour willing, is no thief, nor the other a deceiver. Ἀπατᾷ μὲν, ἀπατεὼν δὲ οὐκ ἔστιν· οὐ γὰρ τέλος ἔχει τὴν ἀπάτην τοῦ νοσοῦντος, ἀλλὰ τὴν σωτηρίαν, says Andronicus Rhodius[f], 'he does indeed deceive, but he is no deceiver; because not the cozening but the curing of his friend is the purpose of his false affirmative.' And to this we suppose that every man is willing enough, and therefore not at all injured. And this reason was good in such charitable deceptions which are by implicit consent or leave justly presumed: so Darius Hystaspes in Herodotus[g], *Ubi expedit mendacium dicere, dicatur: nam idem optamus, et qui mendacium dicimus, et qui veritatem.* Every man is willing enough to be deceived into his own advantage; and therefore when it is so, in such things where the man is willing to receive advantage, there is no harm done, if he be deceived that he may not be undone. He that is in danger of drowning is willing enough to be pulled out of the water, though by the ears, or the hair of his head; and we have reason to believe so in the present affair. *Mendacium nemini noxium, sed alicui commodum, honestum esse,* said bishop Heliodorus in his Fair Ethiopian[h]. He was indeed then writing a romance, by which he intended to do good and no harm, and therefore believed himself innocent. Upon this account the apologues or fables of Æsop, the parables of wise men, and their dark sayings, the cases which lawyers put, and the fictions of law, have their justification,

Et prodesse solent, et delectare[i].

They hurt no man, and do good to every man; they do him profit, and they do him pleasure.

Exit in immensum fœcunda licentia vatum,
Obligat historica nec sua verba fide[k].

Poets do intend to teach, not to deceive, in their fictions, and therefore are allowed.

§ 12. 6) But if the lie be told to another for the preservation not of himself, but of a third person, then the case is more difficult, for here is no presumptive leave, but it is against the mind of the enquirer. Now concerning this, though it be allowed by very many of the ancient doctors of the church, and by the wisest among the heathens, and hath in it a very great charity; yet I cannot see sufficient cause to allow it.

[f] [In Aristot. Eth. Nic., lib. v. cap. 8. p. 297. ed. 8vo. Lugd. Bat. 1617.]
[g] [Herod. Thal., cap. 72.]
[h] [lib. i. cap. 26. fin. p. 50. ed. 8vo. Franc. 1631.]
[i] [vid. Horat. art. poet., 333.]
[k] Ovid. [amor., iii. eleg. 12. 41.]

Καλὸν μὲν οὖν οὐκ ἔστι τὰ ψευδῆ λέγειν·
ὅτῳ δι' ὄλεθρον δεινὸν ἠλήθει' ἄγει.
συγγνωστὸν εἰπεῖν ἐστι καὶ τὸ μὴ καλόν.

'It is at no hand good to tell a lie: but when a truth brings an intolerable evil it is pardonable, but not commendable;' so the Greek tragedy[l]: because it is of itself evil to lie to our neighbour. Not that every false proposition spoken knowingly is a sin; but if it be spoken to deceive, and not to profit, it is spoken to the injury of him that hears, and is a sin because it is unjust, and therefore not to be done for any good; and it is in this very instance in which S. Paul was angry at them who intimated that he told a lie for a good end: it may not be done, when to do it is unjust or injurious. I approve therefore the opinion of S. Austin[m], I am sure it was one of his opinions, for in this question he had more than one; *Duo sunt genera mendaciorum in quibus non est magna culpa, sed tamen non sunt sine culpa,* 'there are two sorts of lies which have in them no great fault, but yet they are not innocent: the one is to lie in jest; which is therefore not pernicious, because it does not deceive, for it is taken but for a jest; the other is to lie for the good of our neighbour; which therefore is the less, because it hath something in it of good will.' And Tertullian[n] is of the same opinion, who reckons this of *necessitate mentiri,* 'to lie in the time of need,' amongst the sins of daily-incursion, or of an unavoidable infirmity. And S. Austin[o] discourses it very well; 'When it is asked whether a good man may lie or no, we ask not after him that belongs to Egypt, to Jericho, or to Babylon, or to the earthly Jerusalem which is in bondage with her children: but what is his office that belongs to the mother of us all, that city that is from above? and then we answer, that no lie is of the truth: but concerning the citizens of this city it is written, that a lie was not found in their mouths.' So that upon this account all those examples recorded in scripture of great persons telling a lie in the time of the danger of themselves or others is no warrant, no argument of the lawfulness of it; for they were under a looser law, but we under a more perfect and more excellent: and yet they did not do well, and if we imitate them we do worse.

§ 13. And therefore we find great examples of Christians and of heathens, whose charity was not cold, but their love of truth and righteousness was much warmer than in the former examples. S. Austin[p] tells of Firmus, bishop of Tagasta, that when one who by evil chance had killed a man fled to him to be concealed from the avengers of blood; to the enquirers he answered, *Nec mentiri se posse, nec hominem prodere,* 'he could neither lie, nor yet betray

[l] Sophocl. in Creusa. [apud Stob. floril., tit. xii. 4.]

[m] Caus. xxii. q. 2. c. 'Ne quis.' [col. 1369.]

[n] Lib. de pudicit. [cap. xix. p. 572 B.]

[o] De mendacio, ad Consentium. [cap. 16. tom vi. col. 468.]

[p] Lib. de mendac., cap. 13. [tom. vi. col. 434.]

the man.' For which answer and refusal the bishop being brought before the emperor, as a reward both of his charity and his truth, he obtained pardon for the man. And it was a great thing which Probus[q] tells of Epaminondas, and Plutarch[r] of Aristides, that they were so great and severe lovers of truth, that they would not lie so much as in jest. Indeed that was very well: and it is of greater obligation to Christians, to whom not only purity and simplicity, ingenuity and sincerity is commanded, but all vain talking is forbidden. But the case is not so clear in the matter of difference, when it happens between a great charity and an unconcerning truth. For who would not save his father's life, or the life of his king, or of a good bishop and a guide of souls, at the charge of a harmless lie, from the rage of persecutors and tyrants? God indeed in His providence hath so ordered the affairs of the world, that these cases seldom happen: but when any man is surprised or tried, unless he be sure that it is in that case a sin to tell a lie, he may be sure it is a very great sin to betray his prince or prelate, his father or his friend. Every man in that case would dispute hardly, rather than give up a good man to death. And if it be come to a dispute, and that it be doubtful on either hand whether the lie in that case, or whether the betraying the man to death, be the sin, it is the safer way to determine for the charity than for the veracity; because in case it be a sin to give him up, it is much a greater sin than to tell such a lie; and then comes in the rule, *Caret peccato quod ex duobus minus est.* The lie is the less evil, and therefore it is no sin when it is chosen to avoid that which for aught we know is the greater. But this is upon supposition that the case is doubtful. To which also must be added, that it must also suppose that it is just to save the man, or that we think it so: for to rescue a malefactor, a bandito, a fugitive of law, hath in it no such obligation. But if it be just that the man be saved, that is a higher justice than the obligation of telling truth to the persecutor; to whom it is as great charity, if from him we take the power of doing evil, as it is justice to rescue the innocent. Now this, and the opinion of so many great men that allow it, and the favourable nature of the case, is enough at least to make this matter probable; and if there be a doubt it is enough to establish it: the question being uncertain, is enough to make the practice certain.

And indeed if we consider things without the prejudice of easy and popular opinions, though it be said, that to tell truth is an act of justice; yet this is not true in all propositions, but in such truths only which concern a man for some real good to him, or for some imaginary good which hath no real evil. But when the telling of a truth will certainly be the cause of evil to a man, though he have right to truth, yet it must not be given to him to his harm: it is like the giving to a madman his own sword; you had better give

[q] [al. Cornel. Nep. in vit. Epaminond., cap. 3.]

[r] [In vit. Aristid., cap. 2. tom. ii. p. 482.]

him a wooden dagger, though the other be his own. But in an unconcerning truth what interest can any man have that is worth preserving? What wrong is done to me if I be told that Alexander died upon the floor, and not upon a feather bed? or that Pittacus his wife hurt her fingers when she threw down the table of meat before her husband's friends[s]? Truth is justice when it does good, when it serves the end of wisdom, or advantage, or real pleasure, or something that ought or may be desired; and every truth is no more justice, than every restitution of a straw to the right owner is a duty. "Be not over-righteous," says Solomon[t]. In these things there is no question but the pretences of little justice ought to serve the great end of charity; and much rather if the truth will do no good, and will do hurt to him that enquires, and more to him who is enquired after. The persecutor hath a right to truth, but no right to be undone; and therefore he is not wronged by that lie that saves him harmless in some measure, and his brother in more; and if he be not wronged, then no man is: and then the lie that so well serves charity, is not against justice; and unless every lie be intrinsically evil and malicious, it hath in such cases no irregularity. And if it be objected that we must not tell a lie for God, therefore much less for our brother; I answer, that it does not follow: for God needs not a lie, but our brother does; and besides this, there can no service be pretended to be done to God by a lie, but it must be in the matter of justice or religion, in both which cases a lie is neither to be told for God nor our brother; but a real service may be done for our brother by such a lie as sins neither against justice nor religion; in which case only I say it may seem to be allowable.

§ 14. But then from these premisses the truth in the instance of the rule is established; for it is not lawful for a guilty prisoner to say not guilty when he is justly interrogated. *Christianum non mentiri etiamsi moriatur ex tormentis,* said Clemens Alexandrinus[u], 'a Christian will not lie, though to escape death with torments.' For the law says, Thou shalt not kill[v]; and the law says, Thou shalt not lie: but the law itself does sometimes kill, but the law does never lie: for although it be said that no man is bound to accuse himself, and indeed the laws of man do not tie him to do it, yet this hinders not the conclusion in this case; for in the present case the man is accused already, and he is not called to be his own accuser, but to confess the fact if he be justly accused by the law: for why does the judge ask, but to be answered truly? For there being three ways in law of proceeding to definitive sentences, α) the notoriety of the fact, β) the conviction by witnesses, and γ) the confession of the party; in the destitution of the first, to prevent the trouble of the second, the law interrogates concerning the third; and it is as in the case of

[s] [Plutarch. de anim. tranquill., tom. vii. p. 842.]

[t] [Eccles. vii. 16.]

[u] [Strom., lib. vii. cap. 8. p. 862.]

[v] [Num. xvi.]

Joshua and Achan[x], "My son, give glory unto the Lord, and confess thy fault." It is true it is a favourable case; and when a man's life is at stake he hath brought himself into an evil necessity: but there is no excusing of a false denial, but it is certainly criminal, and nothing can excuse it, unless the law should give leave to such persons to say what they would, which cannot be supposed in any good government; for then trials of criminal causes between the judge and the thief would be like a match at fencing, and it is infinitely confuted by those laws which use to examine by scourgings or torture; which whether it be lawful or unlawful I do not here determine, but I affirm to be a great testimony, that laws do not love to be played withal, but when they ask soberly intend to be answered truly.

This is also to be extended to the case of advocates, who in a good cause must not use evil arts. For we must not tell a lie for God, and therefore not for the interest of any moral virtue, nor for the defence of righteousness; for a cavil or an injurious lie is out of the way to justice, and she must not be directly wronged that she may be indirectly righted. In the civil law it is permitted, that to avoid abuses and the injurious craft of the opposite party, the advocate of the right may use all arts that are not lies and falsity; *Nec videbitur dolo fecisse cum fraudem excluserit*, says the law, *l.* '*Cum pater*,' § '*Titulo*,' *ff. de legat. secundo*[y]. He may be overthrown by art, so he be not by that which is false:

——— sic ars deluditur arte[z].

But in the case which the lawyers out of Baldus put, the question is evident. Agricola borrows of Sempronius five hundred pounds, and pays him at the day, but without witness: Sempronius sues him for the money: Agricola owes him none, but cannot prove the payment; but yet may not when he is particularly interrogated, to save himself from injury, deny that ever he received any. He must confess the truth though he pay the money again. Covaruvias affirms that he may in this case lawfully deny that ever he received any; because he is not indebted, he received none that remains in his hand, and to other purposes the judge cannot question him; and if he does he is unjust, and therefore Agricola is not tied to answer rightly. But this is not well said nor well considered. For the judge being competent may require him to answer; and the intention of the question is not to know whether Agricola have paid the money, yea or no; but whether he borrowed it. For if he did, the judge is afterward to enquire concerning the payment: and as Sempronius was tied to prove that, so is Agricola tied to prove this; and a lie is not to be confuted by a lie, nor the error of Agricola in not taking witnesses or an acquittance to be supplied by a direct denial of a truth. But if Sempronius have lent Agricola 500*li.* whereof he hath received

[x] [Josh. vii. 19.]
[y] [Digest., lib. xxxi. l. 77. § 31.]
[z] [Dionys. Cato, moral., lib. i. dist. 25.]

200*li.*, if the judge ask whether he owes him that sum which Sempronius demands, he may indefinitely and without more punctuality deny the debt, that is, of 500*li.*, saying that he owes it not: and if the law be such that the confession of one part entitles him to the whole, he may deny the whole to be due in case he have paid a part. But with these two cautions, *α*) that if he be asked concerning a part, he answer to that as justly as he answers to the whole: *β*) that he do not make use of this subterfuge to defraud Sempronius of what is due debt, but only to defend himself from the undue demand. These cautions being observed he hath liberty so to defend his cause, because *majori summæ negative prolatæ minorem nec naturaliter nec civiliter inesse*, say the lawyers. A man by denying the whole does not deny the part; though he that affirms the whole affirms the part; and therefore this defence is just because it is true. But now if in a just cause the advocate or party may not tell a lie; I conclude that much less may he do it in an unjust cause, and for the defence of wrong. But 'much less' signifies nothing, for it may not at all be done in either; and in pure perfect negatives there can be no degrees. But in artifices and crafty entercourses there is some difference; these may be used to defend a just cause that can no other way be defended, but they may not be used to promote an evil cause; because they of themselves, though they be indifferent, yet not serving a good end but an evil, do therefore become evil. And therefore the Greek that denied the *depositum* of his friend, and offered to swear at the altar that he had restored it already, did not preserve his conscience and his oath by desiring his friend to hold the staff in which he had secretly conveyed the money. It is true, he delivered it into his hand, desiring he would hold it till he had sworn; but that artifice was a plain cozenage, and it was prettily discovered: for the injured person in indignation at the perjury smote the staff upon the ground, and broke it, and espied the money. But that made all right indeed, though against the intention of the perjurer. Such like arts as these must not be used to do a mischief: if they do charity and justice, if they have not something to legitimate them, they have very much to excuse them.

§ 15. 7) It is lawful to do otherwise than we have said, when the doing is better than the saying: if the saying were ill, there is no scruple of it; for it ought not to be done, but the saying is to be repented of: not that the saying was a lie, for there is no way of making it good but by causing it to pass into a lie, that is, into vanity and nothing. But then, if the saying be less good, and the deed be contrary, and yet much better, the truth is not so much as the bounty: and there is no injustice in the lie, because there is charity in the action, and a sufficient leave presumed to be given by him that is concerned. Thus the emperor that said he would cut off every one that pissed against the wall, being afterwards appeased and persuaded to mercy towards them that had done amiss,

he expounded his words concerning dogs, and caused all the dogs in the town to be killed. No man here was injured; and it had been an importune adhering to a truth, and a cruel verification of his word to have preferred his word before the lives of so many citizens.

§ 16. 8) It is not lawful to tell a lie to save our fame; but we must rather accuse ourselves than tell a lie, or commit any other sin. *Nemo tenetur infamare se,* is a rule universally admitted amongst the casuists, 'no man is bound to discover his own shame.' And upon this account they give leave to men to hide their sin, to leave their repentance imperfect, to tell a lie, to hazard the not doing of a known duty, to injure innocent persons. Thus when a man hath stolen goods, he is bound to restore, but not if it cannot be done without discovering his person, because no man is bound to disgrace himself. If an adulteress hath some children by her husband, others secretly by a stranger, she is bound not to suffer the legitimate to be injured by provisions for the other: this is true; but if she cannot prevent the injury to the legitimate without discovering herself to her husband, *Non tenetur,* 'she is not bound' to defame self. If her husband examine her concerning it, she may hold her peace; but if that increases the suspicion, she hath no way to escape but by denying it; for she is not obliged to betray or accuse herself. This is the doctrine of the canonists and masters of conscience in the church of Rome, which (as yet) are almost all that have written upon cases. Navarre[a] is the man whom I choose for all the rest. *Nemo tenetur restituere cum periculo famæ consequentis virtutem moralem vel theologicam; non famæ partæ in aliis rebus præclaris, ut ingenio, divitiis,* 'no man is bound to make restitution with the hazard of his fame consequent to a moral or theological virtue;' that is, if it will make him suspected not to be a good man: but if it will only hinder or hazard his reputation of wisdom or wealth or any thing of these natures, it hinders not. And again in the case of an adulteress, *Peccavit, sed potest absolvi, licet taceat, et noceat patri putativo et hæredibus, quando timetur mors, vel amissio famæ*[b], *&c.,* 'she hath sinned, but she may be absolved, though she hold her peace, and be injurious to the supposed father, and wrong the heirs; that is, if she be in peril of her life, or fears the loss of her fame.' 'To save a man's credit, an honest man, to whom it would be a great shame to beg,' *videtur posse clanculum necessaria surripere,* 'may privately steal necessaries;' so Diana[c]. And if so, I do not doubt but he may also lie, and deny it to save his credit, if he be asked uncivilly concerning it. But this also the doctors expressly affirm, that if Titius have disgraced Caius by publishing his secret shame to defame him, he is bound to make restitution of his good name, by denying what he said, that is, by telling of a lie, or by mental reservation;

[a] Habetur in compendio Navarri per Petr. Guivar. edit. Antverp. 1595. [p. 93.]

[b] [Pagina 82.]

[c] Vide compend. impress. Lugd. 1641. [p. 335.]

and that's all one, as I shall prove in the sequel. So Emonerius. Against these prodigies of doctrine I intend this paragraph. We must not commit a sin to save our life, much less to save our fame; and indeed nothing does more deserve infamy than to tell a lie, nothing disgraces a man more: and if a lie be an injustice, then no end can save it harmless.

§ 17. But then concerning our fame, we must rather let it go than let our duty go[d]. For though our fame is a tender part, and very valuable, yet our duty is more: although our fame is necessary for others, yet a good conscience is necessary to ourselves: and he is cruel that neglects his own fame; but he is more cruel that neglects his own soul: and therefore we may expose our good name to go as God shall please, *α*) when we ask counsel and remedy for our soul; *β*) to avoid the sin of pride, and punish the vanities of our spirit; *γ*) to exercise and increase the grace of humility; *δ*) in humiliation and penance for our sins, when our fame is not necessary to others, that is, when we are not eminent and public persons; *ε*) when we are tied to any express duty which is indispensably necessary, as restitution of fame or goods, and yet cannot be done without the publication of our person and our shame; *ζ*) when for our own greater good or for the public interest we are commanded by a just and competent authority; *η*) and lastly, when we must either confess our sin or tell a lie, which is the thing now in question; for we must rather suffer shame than do things worthy of shame, rather be ashamed before men than be ashamed before God, that is, rather be disgraced than damned: for nothing needs a lie but a sin to hide it, and by a lie a sin is made two.

§ 18. 9) It is not lawful to tell a lie in humility, or the confession of sins and accusation of ourselves. *Cum humilitatis causa mentiris, si non eras peccator antequam mentireris, mentiendo efficeris quod evitaras,* said S. Austin[e], 'he that lies in humility, and calls himself a sinner in that wherein he was innocent, hath made himself a sinner by his lying.' And this was it which Abbat Zosimus[f] wittily and piously replied. For when he said he was the greatest sinner, and the vilest of men, to him that reproved him for saying so, and telling him that it was not truly said of him, because every one knew he served God with great diligence and great sincerity, and therefore he ought to speak more truly of himself and more thankfully of God; Zosimus replied, You say very well, I ought to speak truth of myself and thankfully of God; but I am false and unthankful, but therefore I did say true and not unthankfully. But we have truth enough to say of ourselves to make us humble without saying what is false. Ὁ δὲ εἴρων ἀνάπαλιν ἀρνεῖσθαι τὰ ὑπάρχοντα, ἢ ἐλάττω ποιεῖν, says

[d] S. Aug. lib. de bono viduit., cap. 22. [tom. vi. col. 385.]

[e] De verbis apost. [serm. clxxxi. cap. 4. tom. v. col. 868 A.]

[f] Dorotheus, doctr. ii. n. 11. [p. 39. ed. 8vo. Ingoldst. 1616.]

Aristotle[g]: 'to deny the good things that are in us, or to make them less, is dissembling.' All pride is a lie; but humility is truth: and therefore it is but a dissembling humility that lives upon the bread of deceit. Synesius bishop of Ptolemais was a wise man and a great philosopher. But when he was chosen bishop he refused it passionately, and that his refusal might be accepted declaimed most bitterly against himself; that he was a man given to gaming, from which a bishop should be free as God himself; that he did not believe that the world would ever perish; that he did not assent to the article of the resurrection of the dead; that being a philosopher of the stoical sect, he was something given to lying; that he was not popular in his opinions, but humorous and morose, secret and resolute; that if he was forced to be a bishop he would then preach all his opinions. For all this Theophilus bishop of Alexandria consecrated him bishop, as knowing all this to be but stratagem and the arts of an odd fantastic humility. But it was ill done; and Synesius had this punishment for his lying modesty, that he was believed by posterity to be so heathenish and unworthy, that that church chose him bishop only upon hopes he would mend. So Evagrius[h] and Nicephorus[i] report.

§ 19. 10) In a just war it is lawful to deceive the unjust enemy, but not to lie; that is, by stratagems and semblances of motions, by amusements and intrigues of action, by ambushes and wit, by simulation or dissimulation,

Ἢ δόλῳ ἢὲ βίῃ, ἢ ἀμφαδὸν ἢὲ κρυφηδόν[k],

'by force or craft, openly or secretly,' any way that you can, unless you promise the contrary: for it is in open war, if the war be just, lawful to do justice upon the enemy all the ways we can; craft is but the facilitation of the force; and when it is a state of war, there is nothing else to be looked for. But if there be a treaty or a contract, a promise or an agreement in any thing, that is a state of peace so far, and introduces a law; and then to tell a lie or to falsify does destroy peace and justice, and by breaking the law reduces things to the state of war again.

Χρὴ δὲ πᾶν ἔρδοντ' ἀμαυρῶσαι τὸν ἐχθρὸν[l],

'It is lawful to do any thing to destroy your enemy;' that is, so long as you profess hostility: and therefore if you tell a false tale to him to deceive him when you are fighting against him, he is a fool if he believes you, for then you intend to destroy him; but you are not unjust, you are in a state of war with him, and have no obligation upon you towards him. Thus Elisha[m] told a lie to the Syrian army which came to apprehend him, "This is not the city, and this is not the way:" and this is approved and allowed by Plato and Xenophon,

[g] Eth. Nic., lib. iv. cap. 13. [tom. ii. p. 1127.]
[h] Evagr. H. E., lib. i. [cap. 15.]
[i] Niceph. H. E., lib. xiv. [cap. 55.]
[k] [vid. Hom. odyss., ξ. 330, τ. 299.]
[l] Pindar. [Isthm. iii. 66.]
[m] [2 Kings vi. 19.]

Homer and Pindar, Polybius and Thucydides, Plutarch and Lucian amongst the Greeks, Philo amongst the Jews; and S. Chrysostom amongst the Christians says, 'If you examine all the bravest generals, you shall find their bravest trophies to be the production of fraud and craft,' *καὶ μᾶλλον τούτους ἐπαινουμένους ἢ τοὺς φανερῶς κρατοῦντας*, 'and that they were more commended than such who did their work by fine force[n].' Thus the causing false rumours to be spread amongst the enemies is an allowed stratagem in war, neither ignoble nor unjust. Flaccus told that Æmilius had taken the enemies' town, to dishearten the party he fought against[o]: and Quinctius the consul[p] caused to be spread abroad that the enemies on the right wing were fled. By such arts it is very usual to bring consternation to the hostile party: and he whom you may lawfully kill, you may as well deceive him into it as force him into it; you being no more obliged to tell him truth than to spare his life: for certainly of itself killing is as bad as lying; but when you have no obligation or law to the contrary, and have not bound yourself to the contrary, you may do either. But this is at no hand to be done in matters of treaty or promise, either explicit or implicit, as in parties and truces; and therefore it was a foul stain upon Hannibal[q], that he professing open war against the Romans did also profess it against faith and justice, keeping no word or promise if it was for his advantage to break it; and the Trojans were troubled in conscience at their fallacious conducting of their wars, not by stratagem, but by breaking their oaths and covenants,

——— *νῦν δ' ὅρκια πιστὰ*
Ψευσάμενοι μαχόμεσθα, τῷ οὔ νύ τι κέρδιον ἡμῖν[r], κ.τ.λ.

'We fight with lying and breaking promises,' which is unlawful to do. For concerning this thing, that even in war we are bound to keep faith and promise made to our enemies, it is certain and affirmed by almost all wise and good men of the world: *Liquet etiam in bello fidem et justitiam servari oportere, nec illud decorum oportere servari, si violetur fides,* said S. Ambrose[s]; and he proves it by the example of Joshua, who kept his promise which the Gibeonites got fraudulently from him. And the same is the sentence of S. Austin[t]; *Fides quando promittitur, etiam hosti servanda est, contra quem bellum geritur:* and therefore when Nebuchadnezzar had conquered Zedekiah, and taken him into protection and peace upon his word and promise of fidelity, because he afterwards did privately solicit the king of Egypt to fight against the king, he was put to death with greatest cruelty. And this is not only true between those who are

[n] Lib. i. de sacerdotio. [§ 8. tom. i. p. 369 A.]

[o] [Appian. l. vi. de reb. Hispan., c. 42.]

[p] Livius, lib. iii. cap. 29. [lege ii. 64. —salubri mendacio consul fugere hostes ab cornu altero clamitans.]

[q] Valer. Max., [lib. ix. cap. 6. § 2.]

[r] Iliad. [H. 351.]

[s] De offic., lib. i. cap. 29. [tom. ii. col. 38. A.]

[t] Epist. ad Bonifac. [clxxxix. tom. ii. col. 699. B.]

public enemies, foreigners, and strangers, and supreme in their respective dominions, which the law properly signifies under the word '*Hostes*,' *l.* '*Quos nos*,' *ff. De verborum signif.*[u], for this is without question; and therefore all men condemn those that violate embassadors, or that break the laws of truce; and every one blames Titus Labienus[v] for wounding Commius of Arras under the colour of parley: but Attilius Regulus is commended for refusing to give his voice in the senate so long as he was not discharged of his oath made to the Carthaginians. But this is also true, and our word and faith is sacred, when it is passed to all sorts of enemies, to rebels, to thieves, to civil adversaries, to condemned persons, to fugitive servants, such as Spartacus, Eunus, and Athenio; and the reason of all is the same: *Inter quos juris alicujus communio est, inter eos obligationem contrahi*[x], 'they that are under the same law are equally bound;' and whoever promise or treat, do it at least by the law of nature or nations, which alike bind them who are free from any civil obligation. This is that which Tryphoninus[y] said, that if a thief entrusts any goods to the right owner, not knowing that they are his own, he is not obliged to restitution; but every man else is, if he have promised, because they are none of his, and therefore he can be obliged to repay them: and for thieves and fugitives the people of Rome did treat with them, and send embassadors; and all that was bound upon them by that entercourse they kept religiously. And the same they did to condemned persons; as appears in that famous case of Caius Rabirius[z], who was questioned for killing L. Apuleius Saturninus against the public faith given him by the people, when he and his companions fled to the capitol for immunity and a guard against the sentence of death which he had deserved.

But all this is to be understood so, that the faith and word be given by him who hath power to verify it: but when A. Albinus made a peace with king Jugurtha, for which he had no commission, the senate was not obliged to verify it[a]; and Camillus the dictator broke the peace which the Romans had foolishly made with the Gauls[b]; and Scipio dissolved the contract which Masinissa and Sophonisba made without his leave, who had the power[c]. In this there is only caution to be had that there be no combination to deceive or rescind what is found to be disadvantageous, nor advantages taken by the change of hands. For if the Romans finding relief come, made Camillus dictator that they might by pretence of his command break the peace, they did dishonourably and false; but if he was dictator before the peace, he had power, and he had reason. To this can be referred the case of two Italian gentlemen. Guarino had in-

[u] [Digest., lib. l. tit. 16. l. 234.]
[v] Hirtius, lib. viii. [ad calc. Cæsar.] de bell. Gallic., [cap. 3.]
[x] Cicero, de offic., lib. iii. [cap. 26.]
[y] [Digest., lib. xvi. tit. 3. l. 31. fin.]
[z] Vide orat. Cicer. pro C. Rabirio; Appian. bell. civil., lib. i. [cap. 32.]
[a] [Sallust. Jugurth., cap. 39.]
[b] [Liv., lib. v. cap. 49.]
[c] [Id., lib. xxx. capp. 14, 5.]

jured Antonio de Imola; but confessed his fault, asked pardon, made amends: and then Antonio swore his peace and his forgiveness, and that his hand should never be upon him; but in his heart bore him a secret grudge, and therefore smote him secretly, saying that Guarino was a bandito, and therefore condemned by the laws. This is to make our promise the cover of a lie, and the laws to minister to crafty mischiefs. After a promise a man must not change his mind, and then make excuses. *Renunciatio sui juris per pœnitentiam revocari non potest,* saith the law, *l.* '*Pactum,*' *ff. de pact.*[d]

But deceiving the enemy by the stratagem of actions or words is not properly lying; for this supposes a conversation of law or peace, trust or promise explicit or implicit. A lie is the deceiving of a trust or confidence, but in fighting there is none of that; it is like wrestling and fencing, a design to make that part unarmed where he may strike the surer: and of this S. Clemens of Alexandria[e] affirms expressly concerning stratagems in war; *Hæc omnia licebit efficere, vel persuadendo, vel cogendo, vel injuriam faciendo in iis ulciscendis quibus expedit, vel faciendo id quod justum est, vel mentiendo, vel vera dicendo, vel etiam simul utendo aliquibus eorum in eodem tempore:* 'all these things it is lawful to bring to pass by persuasion or by force, by doing injury or harm there where we are to do revenge, by doing that which is just, or by telling that which is true, or by lying, or by doing any one or more of these together.' *Hæc autem omnia, et quomodo oporteat uti unoquoque eorum, cum Græci accepissent a Moyse, non parvam accepere utilitatem,* 'when the Greeks received all these things from Moses, and how they were to use any one and every one of these, they received no small advantage.'

§ 20. In this case all the prejudice which the question is like to have, is in the meaning and evil sound of the word lying; which because it is so hateful to God and man, casts a cloud upon any thing that it comes near: but lying (which S. Basil calls *extremam malitiæ lineam,* 'the extremity of malice,' which S. Ephrem calls 'the rust of conversation') is indeed an enemy; but in war so it should be; only in peace and contracts, and civil conversation, it is intolerable. In war it is no lie, but an engine of war, against which the enemy is to stand upon his guard: and if a man may falsify a blow, much more may he falsify a word; and no justice, no promise, no charity, no law restrains the stratagems in a just war; they which may be destroyed may be deceived, and they may be deceived by false actions, may by false words, if there be no collateral obligation or law to the contrary. 'A just man,' saith S. Austin[f], 'is to take care of nothing but that his war be just;' that is, by a just authority, and for a just reason. *Cum autem justum bellum susceperit, utrum aperta pugna, utrum insidiis vincat, nihil ad justitiam interest,* 'but if it be a just war, it matters not as to the question of justice;

[d] [Digest., lib. ii. tit. 14. l. 46.]
[e] Stromat., l. i. c. 13. [al. 24. p. 417.]
[f] Quæst. x. et xi. in Josue. [tom. iii. part. 1. col. 584, 5.]

whether he overcome by force or by deceit.' *Dolus* and *perfidia* are extremely different.

—— dolus an virtus quis in hoste requirat[g]?

and, *bonum esse dolum si quis adversus hostem latronemve machinetur*, said Ulpian[h], 'craft against a thief or enemy is good,' but not perfidiousness. *Nullo discrimine virtutis ac doli prosperos omnes laudari debere bellorum eventus*, said Ammianus Marcellinus[i], 'to bring war to a happy end, you may use force or wit;' but at no hand break a promise, or be treacherous.

§ 21. He that desires to see more particulars to the same purpose, may, if he please, see Lipsius[k] his politics, and Adam Contzen[l], together with the excellent examples of great and wise personages in Polyænus[m] and Frontinus[n].

11) But this is not to be extended to a licence of telling a lie of the enemy in behalf of our own country, for fame and reputation, for noises and triumph; and I remember that Poggius upon this account lost the reputation of a good historian.

Dum patriam laudat, damnat dum Poggius hostem,
Nec malus est civis, nec bonus historicus[o].

He was a good citizen, but an ill historiographer, that commended all the actions of the Florentines, and undervalued their enemies.

§ 22. 12) Princes may not lie for the interests and advantages of government. Not in contracts, treaties, bargains, embassies and all the entercourses of peace and civil negotiation. For besides it is an argument of fear and infirmity to take sanctuary in the little subterfuges of craft when they are beaten from their own proper strengths, it is also a perfect destruction of government and the great bands of society and civil entercourse; and if they be used to fail, no man can be confident of that affirmative which ought to be venerable and sacred up to the height of religion; and therefore the Egyptian law[p] pressed this affair well, 'Let all that break their word and oaths die for it; because they are loaden with a double iniquity,' *et pietatem in Deos violant, et fidem inter homines tollunt, maximum vinculum societatis*, 'they destroy piety and reverence towards God, and faith amongst men, which is the great ligature of society.' And if princes do falsify their word and lie, their neighbours can have no entercourse with them but by violence and war, and their subjects none but fear and chance. For princes to lie is the greatest undecency in

[g] Virg. [Æneid. ii. 390.]
[h] L. i. ff. de dolo malo. [Digest., lib. iv. tit. 3. l. 1.]
[i] [lib. xvii. cap. 5.]
[k] Politic., lib. v. cap. 17. [tom. iv. p. 165. ed. 8vo. Vesal. 1675.]
[l] Lib. x. politic., cap. 38. et 46, 47. [pp. 797, 804-7.]
[m] [Stratagematum, lib. viii.]
[n] [Stratagematum, lib. iv.]
[o] Sannazar. Epigr., lib. i. [p. 151. ed. 12mo. Rothom. 1609.]
[p] [Diod. Sic. antiq., lib. i. cap. 77. § 2.]

the world: and therefore Diodorus Siculus[q] tells that the Egyptian princes used to wear a golden chain mixed and distinguished with curious stones, and they called it Truth; meaning that nothing was a greater ornament to a prince, nothing ought to be more sacred, or more remembered.

§ 23. Bodinus says otherwise, and that princes and judges have leave, because sometimes they have necessity to lie; and of the same opinion was Plato[r], provided it was done for the good of the people. But that which they mean is only in affirmations and narratives, in adding confidences or producing fears, in making laws and establishing religions; such as was that of Numa, who when he had a mind to endear to the people those good laws which he had made, said that he received them from the goddess Egeria. This may be done against an enemy; and if it be for the good of the people it hath in it charity and some show of prudence, but not to the bravery and magnanimity of a prince: but however it be in this, it can never be permitted to violate a promise or a treaty, nor yet to tell false in a treaty, for that is against peace and against justice. When there is in it no harm, but all good, as in order to persuade the people to a duty, or to their benefit, they in matters of public life being like children in the affairs of their private, that is, when their need and incapacity of being otherwise governed requires it, they may be used as they can, according to that of the Persians, *Sapientes dicunt quod mendacium beneficium faciens melius est vero exitium parturiente*, 'when a lie does charity, it is better than an uncharitable and pernicious truth:' always supposing that the lie which serves charity be not against justice; but when it is in treaties, there a lie does not only disgrace the sincerity of the prince that treats, but is of itself apt to hurt the other: and therefore at no hand to be admitted.

§ 24. The next enquiry is concerning persons criminal, and so for others in proportion.

QUESTION II.

Whether it be lawful to use restrictions and mental reservations, so that what we utter is false, but joined to something within does integrate a truth, and make up a true answer.

§ 25. To this I answer, that this hath no distinct consideration of its own; but whether a mental reservation makes that to be true which would otherwise be a lie. For if it be still a lie, a criminal person may no more speak half truths than whole lies; for that which is but the half of a true proposition, either signifies nothing, or is directly a lie. And upon this supposition, this question is just to be governed by the measures of the first; and in the same cases

[q] Ibid. [cap. 75. § 5.]

[r] Lib. iii. de rep. [§ 3. tom. vi. p. 397.]

in which it is lawful to tell a lie, in the same cases it is lawful to use a mental reservation: for that which is lawful without it is also lawful with it, and the mental reservation does not save it harmless, if it be still a lie. That therefore is the question, whether he that speaks a lie, and thinks the other part which makes it a true proposition, speaks truth yea or no.

§ 26. The case is this. When Campian was taken in England, he gave out that his name was Butler: the magistrate enquires, and is so answered: he gives him his oath, and he swears that his name is so; so much he said: but he added withal to himself, secretly, It is my name that I have borrowed, or my name for this time. But that was not the question; for he was asked that he might be known, and he answered that he might not be known. And he might as well have said, that is my name, and have added in his thought, 'not at all,' or, *Hoc est nomen meum,* and in mind have added, *falsum;* and then the case would have been too plain, and too contemptibly ridiculous: like the sycophant in Plautus[s],

Advenio ex Seleucia, Macedonia, Asia atque Arabia:

this was a lie; but he turned aside and spake softly,

Quas ego neque oculis neque pedibus unquam usurpavi meis,

and so he made up the matter; but he was a liar still: for let the whole be true, yet he speaks but half, and by that half deceives. All that he says is a lie, for the contradictory of it is true; and it is concerning his answer, and the saying, that the question is. It is not enquired whether the man think a lie, but whether he speaks one; and not what it is to himself, for no man can lie to himself, but what this is to him that asks, for to him he lies. And suppose a man should write a proposition, and think the rest to make it true, would not all the world say he wrote a lie? What it is in writing, it is in speaking; that which he speaks in the present case is a lie, and for that he is condemned. For if the words are a lie without a mental reservation, then they are so with it; for this does not alter the words, nor the meaning of the words, nor the purpose of him that speaks them.

§ 27. And indeed this whole affair is infinitely unreasonable; and the thinking one thing, and speaking it otherwise, is so far from making it to be true, that therefore it is a lie because the words are not according to what is in our mind; and it is a perverting the very end and institution of words, and evacuates the purpose of laws, and the end of oaths, making them not to be the end of questions, and the benefit of society, and all human entercourse, and makes that none but fools can lie, none can lie but they which cannot dissemble; that is, they which cannot think one thing and speak another, they which cannot so much as think what is true, or what words would make it true. Certain it is, the devil need not ever tell a lie, and

[s] [Trinumm., act. iv. sc. 2, 3.]

yet serve all his ends. And besides all this, such a person gives the scandal of a lie, and produces the effect of a lie, and does intend the end of a lie, and it is the material part of a lie; only what the man owes to justice he pays with thinking.

§ 28. But then I consider further, if the words spoken be of themselves a lie, and therefore he thinks it necessary by a secret supply of thought to new-mould it into truth; to what purpose is that done? that it may be no lie to himself? or that it may be no lie before him to whom he speaks it? As for himself, he is not concerned in it, but only that he speak truth; but the other is: and if it be a lie without that supplement (for therefore he supplies it secretly), then till it be supplied and made up to him before whom he speaks it, it is a lie to him to whom it ought to be a truth. If the man be bound to speak truth to the magistrate, let him do it; but if he be not obliged, let him tell a direct lie, for this supplement is but a confessing in conscience that it is a lie; and therefore there is no need of such a dissembling artifice; there is more ingenuity in saying that they are not tied to tell truth: but he that tells a lie, and by his mental reservation says he tells a truth, tells two lies, one practical, and the other in theory; one to the magistrate, and the other to himself.

§ 29. I do not say that in all cases it is unlawful to use mental reservations, even in craftiness and escape.

1) S. Gregory[t] hath a case in which he affirms it lawful, *Tyrannorum versutiam atque sævitiam quandoque esse pia fraude deludendam; . . . et objicienda eis quæ credant, ut nocendi aditum non inveniant,* 'to prevent and elude the craft and cruelty of tyrants, they must sometimes be deluded by a pious cozenage; and something must be imposed upon their credulity, that their ways of mischief may be obstructed.' And then he adds, this is to be done so, *ut caveatur culpa mendacii; quod tunc bene perficitur, cum illud fit quod asseritur, sed quod sit sic dicitur ut celetur; quia ex parte dicitur, et ex parte reticetur:* 'when there is nothing told that is false, but yet the matter is hid, because it is not all spoken.' Indeed this is one kind of innocent doing it; but this is lawful to be done without great necessity, even for a probable reason: it is nothing but a concealing of some part of the truth, and a discovery of another part, even of so much as will serve our turn. But

§ 30. 2) Restrictions conditional are lawful to be used in our entercourses: that is, the affirmation or negation, the threatening or promising of a thing may be *cum tacita conditione,* 'with a condition concealed;' when that concealment is not intended for a snare, but is *κατ' οἰκονομίαν,* unusual dispensation, and is competently presumed, supposed, or understood. Thus God commanded Jonah to preach against Nineveh[u], 'Yet forty days and Nineveh shall be destroyed;' meaning, unless they did repent. Thus we may say, I will

[t] Lib. vi. in 1 Reg. c. 3. [tom. iii. col. 376 E.]

[u] [Jonah iii. 4.]

to-morrow distribute my alms, and will give you a part, meaning, if you will come for it. So for affirmations; the physician says to his patient, 'you are but a dead man;' that is, unless some extraordinary blessing happen: 'you are in no danger;' meaning, if you will use the remedies prescribed. But in all these cases the condition must not be insolent, undiscerned, contrary to reasonable expectations, impossible, or next to impossible: for if it be such which cannot be understood, the reservation is a snare, and the whole entercourse is a deception and a lie.

§ 31. 3) If the reservation be not purely mental, but is understood by accidents and circumstances, it is lawful. The shepherd of Cremona that was asked concerning the flock he kept, whether those were his sheep or no, answered confidently that they were; meaning secretly, not his own possession, but his own charge, and not his neighbour Morone's flock. He said true, though his thought made up the integrity of his true proposition, because it was not doubted, and he was not asked concerning the possession, as not being a likely man to be so wealthy. So the guide whom you ask upon the road, tells, you cannot go out of your way, meaning, if you follow your plain directions, and be not wilful, or careless, or asleep; and yet he says truth, though he speaks but half, because he deceives none, and is understood by all. Thus the prophet Isaiah[v] said to Hezekiah when he was sick, "Thou shalt die and not live;" meaning, that the force of the disease is such as to be mortal, and so it stands in the order of nature: and when afterwards he brought a more comfortable message, he was not thought a liar in the first, because they understood his meaning, and the case came to be altered upon a higher account.

§ 32. 4) When things are true in several senses, the not explicating in what sense I mean the words is not a criminal reservation. Thus our blessed Saviour affirmed that Himself did not know the precise day when Himself should come to judge the world; that is, as S. Austin, and generally the christian doctors[x] say, as man He did not know it, though being God He did know all things. But α) this liberty is not to be used by inferiors, but by superiors only; β) not by those that are interrogated, but by them which speak voluntarily; γ) not by those which speak of duty, but which speak of grace and kindness. Because superiors, and the voluntary speakers, and they which out of kindness speak, are tied to no laws in this particular, but the measures of their own good will; and the degrees of their kindness, of their instruction, of their communication, are wholly arbitrary: but the inferiors, the examined, the speakers out of duty and obligation, are tied to answer by other men's measures, by their exigencies, demands, understandings, and purposes; and therefore must not do any thing whereby that truth which they have right and interest to enquire after, may be hindered. The conclusion is this,

[v] [Isa. xxxviii. 1.] [x] Theophylact. in xxiv. Matth. [p. 147.]

in the words of S. Gregory[y], *Sapientia justorum est, nil per ostensionem fingere, sensum verbis aperire,* 'the wisdom of just men is to make no pretences for deception, but by words to open the secret of their heart.'

QUESTION III.

§ 33. Whether it be lawful to equivocate, or use words of doubtful signification with a purpose to deceive, or knowing that they will deceive; and in what cases it is so.

§ 34. To this I answer as to the former, where it is lawful to lie, it is lawful to equivocate, which may be something less than a plain lie: but where it is not permitted to tell a lie, there the equivocation must be innocent, that is, not deceiving, nor intended that it should. And this is that which the Hebrews[z] call *corde et corde loqui,* to speak dissemblingly, *labiis dolosis,* 'with lips of deceit.' For it is remarkable, that *corde et corde* signifies diligence and sincerity, when it means work or labour: but it signifies falsehood and craft, when it means speaking; for nature hath given us two hands, and but one tongue; and therefore a duplicate in labour is a double diligence, but in talking it is but a double fraud. Tacitus[a] observes of Tiberius, *Verba ejus obscura, suspensa, perplexa, eluctantia, in speciem composita,* 'his words were obscure, broken, interrupted, perplex and intricate, striving and forced, and made for show and pretences.' Now if by artifices you deceive him that trusts you, and whom you ought not to deceive, it is but a lie dressed in another way, and it is all one: for *nec artificioso ingenio, .. nec simplici verbo oportet decipere quenquam, qui quolibet artis modo mentiatur*[b]. So that in solution of this question we are only to consider what equivocal speeches may be used, that is, which of them are no lies: for the rest, they are lawful or unlawful by the measures of the first question; for sometimes equivocation is a lie, and equally destructive of civil entercourse. *Duplex responsio habet effectum simplicis silentii.* You had as good not speak at all, as speak equivocally; for a double speech is as insignificant as a single silence.

§ 35. 1) It is lawful upon a just cause of great charity or necessity to use in our answers and entercourses words of divers signification, though it does deceive him that asks. Thus Titius the father of Caius hid his father in a tub, and to the cut-throats that enquired for him to bloody purposes he answered *patrem in doliolo latere:* now that did not only signify a little tub, but a hill near Rome, where the villains did suspect him to be, and were so diverted. Thus we read of a Greek that in the like case hid his brother under a wood-pile; and to the inquisitors answered that he did lie hid ἐν τῇ ὕλῃ, somewhere 'in the wood.' Now in these cases where there

[y] Moral., lib. x. cap. 27. [al. 29. tom. i. col. 360 D.]

[z] [Ps. xii. 2.—בְּלֵב וָלֵב]

[a] [vid. annal., lib. i. cap. 11.]

[b] S. Aug. de conflictu virt. et vitiorum. [cap. 19. tom. vi. append. col. 224.]

is no obligation to tell the truth, any man may use the covers of truth: especially when in this case it is not a lie; for an equivocation is like a dark-lantern; if I have just reason to hold the dark side to you, you are to look to it, not I. If christian simplicity be not concerned in it, nor any other grace indirectly, certain it is that truth is not concerned: For, *In ambiguo sermone non utrumque dicimus, sed duntaxat quod volumus;* said Paulus the lawyer, *l.* 3. *ff. De rebus dubiis*[c]. Now that part of the ambiguity which I intend it in is true, I would never else use that way to save my conscience and to escape a lie; so that if nothing else be concerned, truth is safe. But then care also must be taken that he who hath right to be answered, be not defeated without his own fault. For,

§ 36. 2) If I intend to deceive him, it must be such a person whom I have power to deceive; some one that is a child, or a madman, or an incompetent person to judge for his own good, and one that no other way will be brought to do himself good, one that is willing, or justly so presumed. For unless I have power or right to deceive him, I must not intend to deceive him by any act of mine directly.

§ 37. 3) If it be fit that he be deceived, though I have no right to do it, let him deceive himself; it must be by his own act; to which I may indeed minister occasion by any fair and innocent means. It is fit that he who by violence and injury intends to do mischief to innocent persons, be hindered from it; and there is much good done if an innocent be rescued, and no harm done to the tyrant if he be diverted, and no wrong or injustice if he do deceive himself. Thus if he runs into error by a just and prudent concealment of some truth; if he is apt to mistake my words out of a known and by me observed weakness; if his malice is apt to make him turn all ambiguous words into his own sense that will deceive him: if I know he will listen to my whispers to another person, and watch my secret talk to others; I am not bound to say what will inform him, but what will become my entercourse with the other: in all these and the like cases, if I use my own liberty, I do no man injury. I am not bound to speak words of single signification: if it be sufficient to express my meaning, if it be in the nature and use of the words apt to signify my mind, and to speak that which is true, let him that stands by look to it; I do all that I am obliged to do by the interest of justice and truth. For in these cases, he that speaks does but minister occasion to him that is mistaken; like him that represents artificial sights before the eye, or as the rainbow in the clouds is occasion of a popular error that it is full of colours.

§ 38. 4) But then this must be so used, that the amphibology or equivocation be not insolent and strange, but such as is usual in forms of witty speech. For then he who uses them does no more deceive his hearer than he that speaks obscurely or profoundly is the cause

[c] [Digest., lib. xxxiv. tit. 5. l. 8.]

of error in the ignorant people. Thus if Caius promise to pay to Regulus a hundred attic drachms, he is tied to do it if he does owe it, else not: for if he owes none he must pay none, and he did not promise to give him any thing. For if a meaning be clearly contained in the word spoken, it may be made use of to any just and reasonable advantage; especially if that word ought or was likely to have been understood by the concerned hearer. But this may not be done in fraud and to the diminution of any man's rights. Asper buys corn and linen of Camillus who is newly come from Egypt: they agree together that Camillus shall receive ten talents; but that he shall give him as a free gift half of it back again; and call the ten talents the just price, and the telling it a just solution. If Asper sells his linen by the proportion of the great price told over, he is a cozener; and uses the words of 'price,' and 'payment,' and 'gift,' fraudulently: the amphibology might have been used to ends of justice and reason, but not of knavery and oppression.

§ 39. 5) And this must also be upon just cause. For if a magistrate sends to enquire for Titius, and the officers ask *an Titius sit domi*, 'if he be at home:' to him we may not answer, *Titius non est domi*, 'he does not eat at home;' meaning the word *est* in a sense less usual, to deceive him in the more common, who ought not to be deceived at all: but to save a man's life from violence and injury it may be done. This way hath been sometimes used to vile purposes. Thus Cleomenes[d] having made truce with his enemies for thirty days, used to plunder his country in the night; and Labeo[e] having agreed to give up half his navy to Antiochus, cut his ships in pieces and made them good for nothing. The like stories are told of Alexander[f], of the Locrians[g], of Otho Moguntinus[h]. But it was a barbarous thing of Pericles[i], who promised safety to the enemy if he would lay aside his iron, that is, their arms, as all the world understood it, and as the nature of the thing did signify: when he had done so he fell upon the whole body of them and cut them in pieces, shewing for his excuse the iron buttons that they had upon their coats. Such frauds as these are intolerable in their event, and evil in their cause, and detested by all good and just men. To this purpose I remember a worthy story told by John Chokier[k], of a Spanish

[d] [Plutarch. apophth. Lacon., tom. vi. p. 833.]

[e] [Val. Max., lib. vii. cap. 3. § 4; sed aliter Liv., lib. xxxviii. cap. 38, 9.]

[f] [Diod. Sic., lib. xvii. cap. 84; Plutarch. vit. Alex., cap. 59. tom. iv. p. 131; Polyæn., lib. iv. cap. 3. § 20.]

[g] [Whence the proverb, Λοκρῶν σύνθημα,—Eustath. in Hom. Il. B., p. 209. ed. fol. Bas. 1560; Erasm. adag., col. 856. ed. fol. Aurel. Allobr. 1606.]

[h] [Cuspin. de Cæsar., p. 220; Æn. Sylv. de Europ., cap. 39. p. 435.]

[i] [Frontin. stratagem., lib. iv. cap. 7. § 17; where 'Pericles' is the common reading, but 'Paches' that of the better MSS.]

[k] [Thes. aphor. polit., lib. ii. cap. 15. p. 115. ed. 4to. Mogunt. 1613. A similar story forms the subject of a paper by Steele in the Spectator (No. 491). On the parallel instance in English history of Colonel Kirke the reader will compare the remarks of Macaulay, Hist. of England, vol. i. p. 636. ed. 8vo. Lond. 1849. See also for an instance somewhat similar S. Aug. de serm. Dom. in monte, lib. i. cap. 16. § 50. tom. iii. part. 2. col. 186.]

governor of a town in Milan who kept a noble person prisoner with hard usage, and when his lady came to petition for his liberty, promised to deliver her husband to her if she would let him lie with her. The poor woman being wearied with his temptation and the evil usage of her husband, consents and suffers it. When the governor had obtained his lust, he would also satisfy his anger too; and kills her husband, and to verify his promise, gives her husband to the lady, but newly murdered. The lady complains of this, and tells her sad story to Gonzaga the Spanish general: he finds it to be truth, and made the lady this amends. He commands the governor to marry the lady, that by his estate she might be recompensed for the dishonour: and then, the same day causes the governor to lose his head to pay for his dishonourable falsehood and bloody lie. It was a justice worthy of a great prince; and the reward was justly paid to such a cruel equivocation. This was *subdolus congressus*, 'a crafty treaty,' *quo nil turpius*, said Antoninus the emperor, 'nothing is baser and more dishonourable than it.' Thus did Darius to the noble Œobazus, the father of three brave sons[l], and Xerxes to Pythius, the father of five[m]; they killed what they promised to leave with the father, adding to their cruelty the reproach and scorn of cozenage. A man hath right to use what words he will according to the received use; but he must not use them to evil purposes: and a man may go a little from the more common use to that which is rare, so it be within the signification of the word, provided there be just cause; that which hath good in it to some, and no injury to any.

§ 40. 6) There is between lying and equivocation this only difference, that this may upon less necessity and upon more causes be permitted than lying. For provided that these measures now described, which are the negative measures of lying, be observed; if a man speaks doubtful words and intends them in a true sense, he may use his liberty; always provided that he use it with care, and to the reputation of christian simplicity. In arts and sciences, in jest and entercourses of wit, in trial of understandings and mystical teachings, in prudent concealments and arts of secrecy, equivocal words may be used with more freedom. *Solvite templum hoc*, says Christ, 'dissolve this temple,' viz. of My body, 'and I will raise it up in three days.' So did that excellent confessor in Eusebius[n] to Firmilianus, asking of what country he was, he answered, that Jerusalem was his country; *secorsim apud animum suum ita divinitus philosophatus*, 'privately in his mind speaking divine mysteries,' says the historian. This was well and innocent, because an equivocal speech hath a light side as well as a dark: it is true as well as false, and therefore it is in its own nature innocent; and is only changed into a fault when it is against justice and charity, under which simplicity is to be placed.

[l] [Herod. Melpom., cap. 84.]
[m] [Herod. Polymn., cap. 38, 9.]
[n] Hist. eccles., lib. viii. [append. cap. 11. p. 430.]

§ 41. Under these measures are to be reduced those little equivocations which are used sometimes in craft, but most commonly in wit; such as are to answer by anagrams, so as to tell a true name, but disguised by transposition of letters and syllables, or to give the signification of a name in other words. Thus if a man whose name is Dorotheus calls himself Theodorus, for Nicolaus, Laonicus, for Demonicus, Nicodemus; it is an equivocation or an art of deception, but such as may be legitimated by the cause: but if the enquiry be in a serious matter, the answer must be serious and material, true and significative to the purposes of law, and justice, and society. And therefore if Nicodemus had been interrogated by Pilate in a serious cause, he might not have said his name was Demonicus; and the reason is, because he might not have concealed it. But when it is lawful to conceal it if we can, this is a just way of doing it; for it is no lie in itself, and can be made to do or to minister to that good which is intended. Thus in the book of Tobit[o] we find that the angel Raphael called himself Azarias the son of Ananias, which indeed is the name of his office, or the *rebus*, the meaning of his present employment, that is, *Auxilium Domini, Filius nubis Domini,* 'the aid of the Lord,' 'Son of the Lord's cloud;' meaning that he was sent from the Lord in a cloud or disguise to be an aid and a blessing to that religious family. And he that called Arsinoe Ἥρας ἴον[p], 'Juno's violet,' kept all the letters of the name right, and complemented the lady ingeniously. But these are better effects of wit than ministries of justice; and therefore are not to be used but upon great reasons, and by the former measures, when the matter is of concernment.

QUESTION IV.

§ 42. Whether it be lawful by false signs, by actions and pretences of actions, to deceive others for any good end: and in what cases it is so?

§ 43. To this question I answer in the words of Aquinas[q], because they are reasonable and pious, *Ad virtutem veritatis pertinet ut quis talem se exhibeat exterius per signa exteriora qualis est; ea autem non solum sunt verba, sed etiam facta:* and a little after, *Non refert autem utrum aliquis mentiatur verbo, vel quocunque alio facto,* 'it is all one if a man lies, whether it be by word or by deed.' A man may look a lie, and nod a lie, and smile a lie.

§ 44. But in this there is some variety: for

1) All dissembling from an evil principle and to evil purposes is criminal. For thus Tertullian[r] declaims bitterly against those ladies

[o] [chap. v. 12.]

[p] [Lycophron,—teste Tzetz. in schol., p. 264.]

[q] 2. 2æ. qu. iii. [lege cxi.] art. 1. [p. 205. ed. fol. col. Agr. 1622.]

[r] [Lege Cyprian.] lib. de discipl. et habitu virg. [p. 99. cf. Tertull. de cult. fœm., cap. 8. p. 157.]

'who' (says he) 'being taught by the apostate angels' *oculos circumducto nigrore fucare, et genas mendacio ruboris inficere, et mutare adulterinis coloribus crinem, et expugnare omnem oris et capitis veritatem,* 'besmear their eye-brows with a black semicircle, and stain their cheeks with a lying red, and change the colour of their hair into an adulterous pretence, and drive away all the ingenuity and truth of their faces.' And Clemens Alexandrinus[s] is as severe against old men that with black lead combs put a lie upon their heads; and so disgrace their old age, which ought to be relied upon, believed and reverenced for truth. And it was well said of Archidamus[t] to a man of Chios who did stain his white hairs with black and the imagery of youth, the man 'was hardly to be believed, when he had a lie in his heart, and bore a lie upon his head.' These things proceeding from pride and vanity, and ministering to lust, or carried on with scandal, are not only against humility and sobriety and chastity and charity, but against truth too; because they are done with a purpose to deceive, and by deceit to serve those evil ends. To the same purpose was the fact of them of whom Dio Chrysostomus[u] speaks, who knowing that men were in love with old manuscripts, would put new ones into heaps of corn and make them look like old: such also are they who in Holland lately would exactly counterfeit old medals, to get a treble price beyond the value of the metal and the imagery. These things and all of the like nature are certainly unlawful, because they are against justice and charity.

§ 45. 2) But there are other kinds of counterfeits, such as are gildings of wood and brass, false stones, counterfeit diamonds, glass depicted like emeralds and rubies, a crust of marble drawn over a building of coarse stone[v]; these are only for beauty and ornament, and of themselves minister to no evil, but are pleasant and useful: now, though to sell these images of beauty for real be a great cheat; yet to expose them to be seen as such, and every man be left to his liberty of thinking as he please, and being pleased as he can, is very innocent.

§ 46. 3) There is a third sort of lying or deceiving by signs not vocal: that is, the dissembling of a passion, such as that of which Seneca[w] complains in the matter of grief, which is the simplest of all passions, but pretended by some without truth to purposes not good. *Sibi tristes non sunt, et clarius cum audiuntur gemunt, et taciti quietique dum secretum est, cum aliquos viderint in fletus novos excitantur.* So did Gellia in the epigram[x];

Amissum non flet cum sola est Gellia patrem:
Si quis adest, jussæ prosiliunt lachrymæ.

They are full of tears in company, but in their retirements pleased

[s] [Pædag., lib. iii. cap. 3. p. 262.]
[t] [Stob. floril., tit. lxii. 20; ex Ælian. var. hist., vii. 20.]
[u] Orat. xxi. [tom. i. p. 505.]
[v] Vide Senecam, epist. cxv. [tom. ii. p. 570.]
[w] Epist. xcix. [p. 489.]
[x] [Mart., lib. i. epigr. 34.]

well enough. Now things of this nature are indifferent; but are good or bad according to the cause or the design. "Mourn for the dead," saith Ben-Sirach[x], "and that a day or two, lest thou be evil spoken of." That end is honest; and therefore to mourn in solemnity is good, if we cannot mourn in passion: and the laws enjoin to a man and woman respectively *annum luctus*, 'a year of solemn mourning:' all which time it is not supposed the passion should be troublesome and afflictive. Thus we find David pretending madness before Achish the king of Gath[y]; it was for his life: and we do not find any of the ancient doctors blaming the dissimulation.

§ 47. 4) But that which is here the principal enquiry is, whether signs not vocal, which have in them ambiguity, and may signify several things, may be used with a purpose to deceive. And to this the answer is the same with the former in the case of equivocation, with this only difference; that as there is some more liberty in the use of equivocal words than of a simple lie, so there is some more liberty yet in equivocal actions than in words; because there may be more reasons for such dubious actions than for dubious words, and they are not so near, so usual, so intended significations of our mind, nor ministries of entercourse and society[z]. But where they are taken so, they are to be governed by the same rules; save only that a less necessity may be a sufficient legitimation of such dubious signs; concerning which, besides the analogy and proportion to the former rules, there is no other measure but the severities of a good and a prudent man taking into him the accounts of christian simplicity and ingenuity.

§ 48. I have only one thing to add in order to practice. There is a liberty in the forecited cases there where there is a necessity, and where there is a great charity. For in these cases it is true what S. Chrysostom says[a], *Fraudis quidem magna vis modo ne fraudulento animo fiat: quam ipsam tum ne fraudem quidem nominandam putaverim, verum œconomiam quandam potius ac sapientiam artemque, qua possis e mediis iisque imperviis desperatarum rerum angustiis difficultatibusque correctis et emendatis animi vitiis evadere.* There is a great use of artifices in our words and actions when we are hard put to it in desperate cases and extremest difficulties, and then these arts are not indeed deceptions, but just escapes. But yet this I say, that it is not safe to use all our liberty; because when it is practised freely, we oftentimes find ourselves ill judges of the necessity. And however it be, yet it is much more noble to suffer bravely than to escape from it by a doubtful way; *α*) for the love and honour of simplicity, *β*) for the endeavours of perfection, *γ*) for the danger of sin, *δ*) for the peril of scandal. And it was bravely done of Augustus Cæsar[b], who when he had promised

[x] [Ecclus. xxxviii. 17.]
[y] [1 Sam. xxi. 13.]
[z] Vide Aquinat. in 3. l. dist. xxxviii. art. 3. ad 5. [tom. vi. fol. 146. b.]
[a] Lib. i. de sacerdot. [t. i. p. 370 D.]
[b] [Dion Cass., lib. lvi. cap. 43.]

ten thousand sesterces to him that should bring Corocotta, a famous Spanish thief, alive into his presence; Corocotta himself came and demanded the money and had it, and he was spared besides; he escaped for his wit and confidence, but had the money *pro fide Cæsaris*, according to the faith and nobleness of Cæsar's justice: for he might have made use of the ambiguity of his words to have kept the money, and hanged the thief; but he thought it nobler to do all that he could be thought to have intended by his words. Ὁ μεγαλόψυχος παρρησιαστικὸς καὶ ἀληθευτικὸς, says Aristotle[c], 'the brave and magnanimous man does not sneak, but speaks truth and is confident.

§ 49. It cannot be denied what S. Clemens Alexandrinus[d] said, ἐπὶ τῶν πλησίον ὠφελείᾳ μόνῃ ποιήσει τινὰ ἃ οὐκ ἂν προηγουμένως αὐτῷ πραχθείη, 'a good man will for the good of his neighbour do something more than he would do willingly and of his own accord;' yet when it is his own case, it is better to let go his liberty than to run a hazard. Sarah did lie, and she was reproved by the angel; Abraham did so too, says Tertullian[e], *Saram sororem suam mentitus est*, but he was reproved by Abimelech: Jacob did lie to his father, but he is not commended for it; and Rachel did dissemble, but she died in childbirth, and it was occasioned by that, say the Jewish doctors: Simeon and Levi destroyed the Sichemites by a stratagem, but they troubled the house of Israel by it: Thamar deceived Judah, but she played the harlot in deed as well as in words. And concerning those worthy persons mentioned in Scripture who did lie or dissemble, the christian doctors have been put to it to make apologies, and excuses, and justifications for them, and are not yet agreed how to do it. S. Basil and S. Chrysostom are two examples of several proceedings. S. Basil always bore his heart upon his hand, and shewed it to every one that was concerned. S. Chrysostom[f] used craft against the simple, and fraud against him that spoke all things in simplicity. Chrysostom was forced with laborious arts to excuse and justify it, and did it hardly: but S. Basil had no scruple concerning his innocence; what he had concerning his prudence and safety does not belong to the present question. But of this last particular I have given larger accounts in a discourse on purpose[g].

§ 50. The conclusion is this, if a man speaks a direct downright lie, he can very hardly be innocent: but if by intrigues of words and actions, *per involucra verborum* (as Cicero[h] calls it), *per orationem intortam* (as the comedy[i]), 'by covers of words,' and 'by crooked speeches,' a man have entercourse, he had need be very witty to be innocent, according to the Hebrew proverb, 'If a man have wit

[c] Lib. iv. eth., cap. 8. [tom. ii. p. 1124.]
[d] [Strom. lib. vii. cap. 9. p. 863.]
[e] [De cult. fœm., lib. ii. cap. 2. p. 155.]
[f] [Vide in fine lib. i. de sacred. [ubi supra.]
[g] Serm. 'Of christian simplicity.' [vol. iv. p. 608.]
[h] [De orat., lib. i. cap. 35.]
[i] [Plaut. Cistell., act. iv. sc. 2. 64.]

enough to give cross and involved answers, let him use it well;' if he knows not how to do it well, let him hold his peace. It was but a sneaking evasion of S. Francis, when the pursuers after a murderer asked if the man came that way; no, saith the friar, thrusting his hand into his sleeve, he came not here. If a man's wit be not very ready and very clear, while he thinks himself wise, he may become a vain person. The devil no question hath a great wit, and a ready answer; yet when he was put to it at his oracles, and durst not tell a downright lie, and yet knew not what was truth many times, he was put to most pitiful shifts, and trifling equivocations, and arts of knavery; which when they were discovered by events contrary to the meaning which was obvious for the enquirers to understand, it made him much more contemptible and ridiculous than if he had said nothing, or confessed his ignorance. But he that does speak, and is bound to speak, must speak according to the mind of him with whom he does converse, that is, so to converse, that by our fault he be not deceived against his right, against justice or against charity, and therefore he had better in all things speak plainly; for truth is the easiest to be told, but no wit is sufficient for a crafty conversation.

RULE VI.

IT IS NOT LAWFUL FOR PRIVATE CHRISTIANS WITHOUT PUBLIC AUTHORITY TO PUNISH MALEFACTORS, BUT THEY MAY REQUIRE IT OF THE MAGISTRATE IN SOME CASES.

§ 1. In the law of nature it was permitted; but as the world grew older, and better experienced, and better instructed, it became unlawful and forbidden; in some places sooner, in some places later. The *ephori* among the Lacedæmonians might kill criminals extrajudicially[h]; and Nicolaus of Damascus[i] relates, that amongst the Umbrians every man was the revenger of his own injuries: for till by laws men were defended, they by revenges and retaliation might drive away the injury as far as was necessary. But because when a man is in pain and grief he strikes unjustly and unequally, and judges incompetently, laws were made to restrain the first licence, and to put it into the hands of princes only, because they being common fathers to their people, were most likely to do justice equally and wisely. *Idcirco enim judiciorum vigor jurisque publici tutela videtur in medio constituta, ne quisquam sibi ipsi permittere valeat ultionem,* said Honorius and Theodosius[j], 'that no man

[h] [Isocr., orat. xii. p. 367.]
[i] [Apud Stob. floril., tit. x. 70.]
[j] [Cod. Theodos., lib. xvi. tit. 8. l. 21.]

might avenge himself, laws and judges and tribunals were appointed for public justice.'

§ 2. But for this provisions at first could not be made so generally, but that some cases would happen, and some gaps be left open, which every man must stop, and provide for as well as he could. Thus we find that Phinehas, when he saw God was angry with the sons of Israel about the matter of Moab, himself, to divert the anger that was already gone forth, smote Zimri, a prince among the Simeonites, and his fair mistress in his arms, and killed them in their crimes[k]. From his example many zealots amongst the Jews took liberty to kill a man that sinned apparently. So Mattathias killed a Jew that offered sacrifice according to the manner of the Greeks[l]; and the people killed three hundred of their countrymen upon the like account[m]. But this quickly grew into excess and irregularity; and therefore when our blessed Lord was zealous for the honour of the temple, He went no further but to use a little whip to affright them from their profaneness.

§ 3. And yet in some cases God permitted private persons to be executioners; as in case a Jew tempted his child, or brother, or neighbour to idolatry, the tempted person might kill him without delating him to the judge[n]: and in a cause of blood, the next of kin might kill the manslayer if he overtook him before he took sanctuary. But here the cases were such that the private person was not judge, but by leave from God was executioner upon the notoriety of the fact: for although for a dead person his nearest relation might with his own hand take vengeance, yet if himself was wounded he might not, but by the sentence of the judge, say the doctors of the Jews; because he ought not to be judge where he could hardly be moderate.

§ 4. In the sea, and in desert places, where there can be no appeals to judges, every man is executioner of the sentence of the law of nations. Thus we find that Julius Cæsar[o] pursued the pirates in the Mediterranean and Adriatic seas; and because the proconsul would not, he gathered a sudden navy and overtook them, and hanged them upon the main-yards of their own vessels. Thus the wild Arabs and Circassian thieves that live in vast places, and under no government, being public enemies of mankind, and under no laws, no treaties or communications of peace, may be killed by every one that is injured and spoiled by them, when he can do it. To this agrees that of Tertullian[p], *In publicos hostes omnis homo miles est;* and that of Democritus[q], Κιξάλλην καὶ λῃστὴν πάντα κτείνων τις ἀθῶος ἂν εἴη, καὶ αὐτοχειρίῃ, καὶ κελεύων, καὶ ψήφῳ, 'he that kills a thief and a robber with his own hand, or by command, or by consent, is innocent;'

[k] [Num. xxv. 7—15.]
[l] [1 Macc. ii. 23—5.]
[m] [3 Macc. vii. 15.]
[n] [Deut. xiii. 9.]
[o] [Vell. Paterc., lib. xi. cap. 42; Plutarch. in Cæsar., cap. 2. tom. iv. p. 170.]
[p] [Apol., cap. ii. p. 3 B.]
[q] [Apud Stob. floril., tit. xliv. 19.]

εἶκε πάθοι τά κ' ἔρεξε δίκη κ' ἰθεῖα γένοιτο [q].

But this is to be understood of the permission in the law of nature.

§ 5. For in christianity men are not easily permitted to touch blood; not hastily to intermeddle in the causes of blood; not to give sentence for the effusion of it: these things are to be done with caution, and a slow motion, and after a loud call, and upon a great necessity; because there are two great impediments: the one is the duty of mercy, which is greatly required and severely exacted of every disciple of Christ; and the other is, that there is a soul at stake when blood is to be shed, and then they are told that as they judge they shall be judged, as they measure it shall be measured to them again. And therefore criminal judges have a tender employment, and very unsafe, unless they have the guards of a just authority, and a great mercy, and an unavoidable necessity, and public utility, and the fear of God always before their eyes, and a great wisdom to conduct their greatest dangers.

§ 6. That which remains and is permitted in christianity is,

1) The punishment of reprehension, of which every wise and good man may be judge and minister; for as S. Cyprian said that every bishop is a bishop of the catholic church, that is, wherever he chance to be he must not suffer a soul to perish if he can help it, but hath right every where to minister to the necessities of souls who are otherwise destitute, and every where to pray in private, to bless, to absolve dying persons, to supply the defects of a widow and desolate church; so every good man hath power to punish a base and vicious person by severe and wise animadversions of reproof. For 'a wise man is never a private man' (said Cicero); and Nasica and Cato, and Fabius and Lollius, were in authority like perpetual consuls, always in power over a vicious man.

§ 7. 2) It is not against the laws of christianity, that parents, and tutors, and masters, and governors should punish criminals, that is, such as are subject to them, and by such punishments as are permitted by law, and by such measures as are agreeable to the just and charitable ends[r] of their respective governments, and by the analogy and proportions of christian mercy and clemency: in the execution of which punishments there need no other laws be given but what are dictated by the mind of a charitable, dispassionate, and a good man. But then in these governments there is more liberty than in any other but the supreme: for a personal injury done to a father or a tutor may be punished by the father or tutor respectively, and so also it may by the supreme power, *Cum dignitas auctoritasque ejus in quem est peccatum tuenda est, ne prætermissa animadversio*

[q] [Hesiod. secund. Michael. Ephes. p. 65. b, in Arist. eth. Nic., lib. v. cap. 8.]

[r] Jubet Deus . . ut manus nostras super minores semper habeamus, hoc est, ut peccantes eos assiduis verberibus corrigamus, ne amore inutili et indulgentia nimia educentur ad malum, et ad vitia nutriantur.—Lactant. instit., lib. vi. [cap. 19. tom. i. p. 488.]

contemptum ejus pariat, et honorem levet, said Taurus the philosopher in A. Gellius[s]. An injury done to a superior is a contempt of his authority as well as injurious to his person; and if it be not punished, will soon disorder the superiority. But then this must be wholly for emendation; and though anger may be the instrument[t], yet charity must be both the measure and the end.

§ 8. 3) When the law hath passed a sentence, and given leave to any subject to be executioner, he that is injured may do it. But this is to be understood in one case only that concerns the subject, and one that concerns the prince. *α*) For if the prince commands that whoever finds such a person shall smite him to death if he can, every man is bound to it, if the law be just: as in the case of treason, or deserting their military station, it hath sometimes been decreed. *In reos majestatis,* 'against traitors every man is a soldier,' says Tertullian[u], who affirms it also concerning all public enemies. *β*) The other case which relates to the advantage of the subject, is, when the execution of the public sentence is necessary to be done speedily for the prevention of future mischiefs. Thus Justinian[v] gave leave to every man to kill the soldiers that came to plunder; for in that case there was no staying for solemnities of law, and the proceedings and method of courts. *Melius enim est occurrere in tempore quam post exitum vindicare: vestram igitur vobis permittimus ultionem, et quod serum est punire judicio subjugamus edicto, ut nullus parcat militi, cui obviare telo oporteat ut latroni.* This which the law calls a revenge is but a mere defence, it is a taking the mischief before it be intolerable; and therefore this will be the more out of question: for certainly if some punishments are lawful, all necessary defences are much more; this only excepted, that the degree of this is excessive and uncharitable, and therefore ought not to be done, but in those cases where the evil likely to be suffered by the innocent is intolerable, as if the plunder be the undoing of a man and his family, and will cause them to perish, or to be extremely miserable; and therefore Ulpian[w] said well, *Furem nocturnum si quis occiderit, ita demum impune feret, si parcere ei sine periculo suo non poterit,* 'though the law permits a man to kill a night thief, yet he may not do it if he can secure himself without it:' but when to spare the thief will be his own undoing, then he may. For it is true which was said of old,

Res omnes conditæ famulantur vitæ humanæ;

and again,

Nobilissimum est quod orbis habet humana vita[x].

Nothing is fit to be put in balance to the life of man; and therefore

[s] [Noctt. Attic., lib. vi. cap. 14.]

[t] [Compare Bp. Butler, Serm. on resentment.]

[u] [ubi supra.]

[v] Cod. rubr., 'Quando liceat se sine judice vindicare.' [Lib. iii. tit. 27. l. 1.]

[w] [Digest., lib. xlviii. tit. 8. l. 9.]

[x] [Ψυχῆς γὰρ οὐδέν ἐστι τιμιώτερον.—Eurip. Alcest. 301.]

when a man's life and a man's goods are compared abstractly, these are extremely outweighed by that: and therefore for little and tolerable losses it were well if the laws would appoint lesser punishments than death. But when it is considered that a great loss makes a man and all his family live a miserable life, and men willingly venture their lives to save such great portions, the laws that put such thieves to death are very justifiable. And it is observable that when God in Moses' law appointed a mulct of money upon thieves, it was supposed to be in such robberies where the thief was able to restore four-fold. Add to this, that if our laws did provide that stolen goods should be restored, they would less need to give leave to the true man to kill the thief. But now that he is the more likely to be undone, because no restitution is to be made him, he may in the case of such great spoilings be better allowed to be the executioner of the sentence of the law to prevent his ruin, and to defend his right. But it were much better if he would not at all use this liberty.

§ 9. 4) But when the evil is past, if the law permits the execution of her sentence to the injured person, it is to be supposed that there is only an indulgence to the grief of him that is wronged; and therefore if he kills the injurious man, he is indemnified in law, but not quitted in conscience. Thus when the civil law of old, *L. 'Gracchus,' C. ad legem Juliam, de adulteriis*[y], and at this day the Spanish laws permit the wronged husband to kill the adulterer, it is lawful; that is, it is not against justice, and therefore the law cannot punish it: but because it is extremely against charity, his confessor ought not to absolve him without repentance and amends; for the gospel does not approve it. The reason is, because if the injury be done, the execution is merely revenge, without the mixture of any good thing to legitimate it. Now if the law does it by her ministers, it is παράδειγμα, an example, ἵνα ἄλλοι πρόνοιαν ποιῶνται καὶ φοβῶνται (as Demosthenes[z] his expression is), 'that others may be afraid,' and not be tempted by impunity. But if the man does it by his private hand, there is in it less of observation and exemplarity; or if there were not, yet there were less intended; and therefore the private executing hand is not so innocent: μὴ ἑαυτοὺς ἐκδικοῦντες, saith the apostle[a], 'we must not avenge ourselves:' this can hardly be reconciled with such executions. There is only this allay in it, that if the wronged husband can no other way prevent his dishonour and his wife's sin or continuance in it, if the law permits it to him, it may be supposed to be done for prevention, not for revenge; and if it be so, as it is supposed, it hath many degrees of excuse, and some of lawful, but nothing commendable; for nothing can reconcile it to charity, because (as I observed before) there is a soul in the way which ought strangely much to be regarded. Nay, there are two souls: for it was rarely said by Pythagoras, as Jamblichus[b]

[y] [Cod. Justin., lib. ix. tit. 9. l. 4.]
[z] [In Neær., orat. lix. § 101. p. 1488.]
[a] [Rom. xii. 19.]
[b] [Vit. Pythag., cap. 28. p. 324.]

relates, πολλῷ μᾶλλον ἀδικεῖσθαι δεῖν, ἢ κτείνειν ἄνθρωπον· ἐν ᾅδου γὰρ κεῖσθαι τὴν κρίσιν, 'it is better to suffer the injury than to kill the man, .. for after death there shall be a judgment;' he that did the wrong shall be punished, and he that spared him shall be rewarded.

§ 10. 5) But if the criminal be of so desperate an impiety that he seems incorrigible, and of a long time hath seemed so (for that is the best way to prove him so) then it is lawful for a private hand to be executioner of the public sentence; but he that is injured ought not to do it. Not that it is murder, or directly unlawful in the precise action: but that it can hardly be quitted from revenge; and it will be hard for any man to be so good as not to have just cause to suspect himself, if he be so bad, upon the mere permissions of law to thrust his hand into his brother's heart. Other persons may do it out of zeal or love of their country's good. The civil law[c] gave leave *exercendæ publicæ ultionis adversus latrones, desertoresque militiæ,* 'of executing the anger of the law against fugitive soldiers and common robbers:' he that had not been robbed by them might better do it than he that had: for it being permitted *pro quiete communi,* 'for the public peace,' he is a good patriot that honestly and justly ministers to that end alone; but he that hath suffered by them had need be an angel, if he does not spoil that good end by the mixture of revenge; and if he be an angel he will find a better employment than to kill a man where it is not commanded and where it is not necessary.

§ 11. 6) Some affirm that princes are never to be reckoned to be private persons when they proceed according to the sentence and meaning of the law, though they do proceed *brevi manu,* as the style of the law is; and do not proceed by the methods and solemnities of law by reason of disability to do it. Thus if a man grow too hard for the laws, the prince must send soldiers to him, not serjeants, if the case be notorious and it be a public sentence: and the lord mayor of London did strike Wat Tyler, though he was not convicted in law nor sentenced by the judges. Upon this account the king of France offered to defend the killing of the duke of Guise: concerning which I cannot give accounts, because there might be in it many secrets which I know not. But if there wanted nothing but solemnities of law, and there wanted power to suppress him by open force, and that it was just and necessary that he should die, and by law he was guilty of it, if there was any thing wanting which should have been done, he that died was the cause of it, and therefore to him it was to be imputed. But supposing what these men affirm to be true; (concerning which I shall affirm nothing,) yet this is very rarely to be practised, because it is seldom lawful, if ever it be, and not without the concurrence of very many particulars, and is very easily abused to extreme evil purposes; as in that intolerable

[c] [Cod. Justin., lib. iii. tit. 27. l. 2.]

and inhuman massacre of Paris, which all generations of the world shall speak of with horror and the greatest detestation. But concerning the thing itself that which the lawyers say is this, *Generale edictum accedente facti evidentia habet vim latæ sententiæ,* 'when a law is clear and the fact is evident, the sentence is already past:' and therefore some of them are apt to say, to do the same thing in a chamber is not murder, if it be justice when it is done upon a scaffold; for the same demerit in the criminal and the same power in the supreme is an equal cause and warranty of the execution. And since it is cheaper to employ a physician than an army, and there is less prejudice done to the public by such a course, since the state of Venice kills upon suspicion, and there are some things known which cannot be proved, and cannot be suffered, and since we see that solemnities of law, like thin aprons, discover more shame sometimes than they hide, and give more scandal than they remove; these men are more confident than I am: for they dare warrant this course which I dare not. But he that will adventure upon this, must take care that it be done α) by a competent authority, β) upon a just cause, γ) for a great necessity, δ) according to the intent and meaning of the law; ε) it must be *in summo et mero imperio,* by one that is absolute and supreme; ζ) it must be upon notoriety of fact; η) when there is no scruple of law; θ) and if after all this there be no scruple in conscience, ι) nor yet any other means of securing the public, κ) and the thing have in it as great charity to the public as there is in it justice to the particular; λ) and that the war be not *justum bellum,* that is, between supreme powers, μ) nor yet any treaty, or promise, faith or covenant to the contrary between the supreme and the inferior offending; ν) nor yet there be a scandal of greater mischief than can be procured by the unsolemn proceeding; ο) nor is done *refragante judicio procerum, et sententiis jurisprudentum,* 'against the earnest advice of prudent and grave persons,' which if it happen will arrest the resolution, and give check and consideration to the conscience: then it is supposed by many that there may be reason enough to forbear what cannot be used, that is, the solemnities of law, which are the methods of peace, not to be expected in a state or time of war. And by this time it will be so hard to do it justly, that it will be better to let it alone. For after all these cautions and provisos, it is not permitted to assassinate or privately to murder the criminal, but to proceed by open force or by avowed manners of justice, though they be not solemn, and the common ways of peace; that is, they must be owned in public, and asserted by law, either antecedently or *ex post facto.* An example of the first way is frequently seen in France; where the fugitives of law are proceeded against in their absence, and executed *in effigie;* and in the states of Italy against the banditti: and of the second way examples have been seen in the manifestos of some princes when they have been put to such extrajudicial and private ways of animadver-

sion. But these things happen not but in such places where princes are more absolute, and less christian, or that the subject transgresses by power.

§ 12. 7) Upon the like account it hath in some ages of christianity itself, but in many ages of gentilism, been permitted that by single duel men prove their innocence and oppress the supposed criminal:

——— puroque pioque duello
Quærendas res censeo ———

said one of the Roman senators to Ancus Martius[d]. Now concerning this I shall not need to say much; because now long since all christian princes and states, and all churches and ecclesiastical persons have condemned it as a grievous crime upon these two accounts: *α*) because it is a tempting God by ways which He hath never allowed, it is a lottery that He never gave warrant to: and upon this account it was that pope Nicolas the first[e] forbad the emperor Lotharius to try his wife's suspected chastity by the combat of two champions, *cum hoc et hujusmodi sectantes, Deum solummodo tentare videantur*[f]; and to the same purpose pope Celestine and some others did forbid it: *β*) because the innocent person is exposed to equal danger with the criminal, and hath been oftentimes oppressed; as it happened in the case of William Cator[g] an armourer in Fleet street, who being by his servant John David falsely accused of treason, was yet slain in Smithfield by his perjured adversary: and then the people have accepted the event as a divine testimony, which in this case being to a lie and to the false part, must needs be infinitely dishonourable to God. But if it were not for these and some other evil appendages, and if the innocent person were sure to prevail, and the law made the private hand the minister of justice, who only can tell the secret, and therefore is the surest judge, there is no peradventure it might as well be done by that hand as by any other. But this cannot be reduced to practice at all; but in the whole conjunction of affairs is highly criminal and intolerable. In Spain we find that a duel was permitted between two eminent persons (*los infantes de lara*, the Spaniards call them) only upon the accusation of an injury done to some ladies, the daughters of Rodrigo de Bibar; and the victory was gained by him that was innocent: and another by the men of Zamora in the case of the death of king Sanctus; and quickly they found advocates and defenders. And Vasquius affirms it may as well be permitted by law, as that an injured husband should kill the adulterer. But besides the reasons formerly alleged against such private executions of an uncertain sentence; because they have no foundation in justice or charity, neither

[d] [vid. Liv., lib. i. cap. 32.]
[e] [Gratian. decret., part. 2.] caus. ii. qu. 3. c. 22. 'Monomachiam.' [col. 705.]
[f] Decret., tit. de vulgari purgat. [Greg. IX. decret., lib. v. tit. 35. cap. 1. col. 1694.]
[g] Stow's Annals, 25 of Henry [VI. p. 385. ed. fol. Lond. 1631.]

in public or private good, they are deservedly banished from all christian countries.

§ 13. But this is to be understood only of judicial duels, whether criminal or civil; for as for duel extra-judicial and private, it is so unjust, so uncharitable, and so unreasonable, so much against all laws of God and man, so infinitely against the piety of him that survives it, so infinitely against the hopes of him that dies in it, that nothing can excuse it: but even duels which are permitted by laws, ought not to be so, and are not permitted by religion; excepting only when the duel is a *compendium* of war, and is designed to do justice, and to prevent the greater issues of blood.

§ 14. Thus the Romans and Albans determined their wars by the fight of three champions of each side; and the Curiatii being subdued by Horatius Cocles[h], the city Alba came into subjection to Rome. David and Goliah fought for their respective countries; but the duel did not determine it directly, but only discouraged the conquered party. Upon the same account Clodoveus the first christian king of France offered to fight with Alaricus prince of the west Goths; *nobilissimo pari fortunam utriusque gentis decretum iri*, said Paulus Æmilius[i]: and Guicciardine[j] tells that when the French and Italian armies were ready to join battle, the fortune of the day was committed to thirteen champions on either part. Camden[k] reports that when the Saxons and Danes grew weary of the so great effusion of blood caused by their daily wars, *misso in compendium bello, utriusque gentis fata Edmundo Anglorum et Canuto Danorum regibus commissa fuerunt, qui singulari certamine de summa imperii in hac insula depugnarunt.* Edmund and Canutus fought in a little island by Gloucester, and drew the war into a *compendium*, and saved the lives of their subjects by hazarding their own. William duke of Normandy offered this to Harold before the battle in Sussex; and king John of England to Lewis of France, by deputed champions. And Richard the second of England challenged Charles the sixth of France concerning the title of the French crown. And pope Martin allowed the duel between Charles of Anjou and Peter of Arragon to determine the question concerning the kingdom of Sicily. These indeed are great examples, and are then only just when the war is just, and on that side only on which it is just. *Hæc est necessitas quæ bellum justificat*, saith Baldus[l], *cum ad bellum extremo loco confugitur*, 'when the war is necessary and the case is extreme, the necessity makes it just,' when the contrary evil is intolerable: and when things are come to this pass, then it is true what Bodinus[m] says, *Non interest quo numero adversus hostes decernatur*, 'it matters

[h] [Wrongly 'Cocles,'—see Liv., i. 25, 6.]

[i] [De reb. gest. Franc., lib. i. p. 9 A. ed. fol. Bas. 1601.]

[j] Lib. v. hist. Ital. [p. 190. ed. Lat. fol. Bas. 1566.]

[k] In Dobunis. [p. 254. ed. fol. Lond. 1607.]

[l] Bald. v. consil. 493. [439. num. 3. in indice.]

[m] [De rep., lib. iv. cap. 7. p. 745. ed. 8vo. Ursel. 1601.]

not by how few the war be ended.' Such a duel is a just war, as all war anciently was called a duel.

Græcia barbariæ lento collisa duello[n];

All Greece and Barbary fought a duel. It is *duarum partium congressus*, 'the contention of two armies' as well as two single persons: and that the words are *synonyma* we find in Varro[o], Festus[p], Plautus[q], and P. Merula[r]; but concerning the thing itself, who please to see more instances and precedents, more arguments and verifications of it, may at his leisure find many particulars in Fricius[s], Ayala[t], Bocerus[u], Alciat[v], Bodinus[w], Beuther[x], and Albericus Gentilis[y].

I have now described the prohibitions of private executions, together with the cases in which they have been or may be permitted. The next question is upon the latter part of the rule;

WHETHER IT BE LAWFUL FOR A CHRISTIAN TO REQUIRE OF THE MAGISTRATE THAT HIS OFFENDING BROTHER MAY BE PUNISHED.

§ 15. 1) If the injured person be designed only to punishment ἐκ ζέσεως περικαρδίου αἵματος, and δι' ὄρεξιν ἀντιλυπήσεως, 'out of anger and a desire to be revenged,' there is no question but it is infinitely unlawful. "Render not evil for evil," and divers other prohibitive words of our blessed Lord, cannot mean less than the forbidding of revenge, though obtained and desired from the hand of justice; for although the magistrate is bound to do it, if required, yet he that requires for vengeance sake is of an unchristian spirit: and this was observed by Dion in Plutarch[z], τὸ ἀντιτιμωρεῖσθαι τῷ προαδικεῖν νόμῳ δικαιότερον ὡρίσθαι φύσει γινόμενον ἀπὸ μιᾶς ἀσθενείας, 'to receive and require amends from the law is more just than that injury against which justice is required, but it proceeds from the same weak principle;' and therefore it is fit for none but fools and weak persons:

——— quippe minuti
Semper et infirmi est animi exiguique voluptas
Ultio: continuo sic collige, quod vindicta
Nemo magis gaudet quam femina[a]. ———

Or rather it becomes not such persons; for nothing can become them but to leave their folly and to grow wiser; for it is *cæcus et irra-*

[n] Horat., lib. i. epist. 2. [7.]
[o] De lingua Latina. [p. 25. ed. 12mo. Bas. 1536.]
[p] In verb. 'Duellum.' p. 124. ed. 4to. Amst. 1699.
[q] Amphitryo. [Act. i. sc. 1. 34.]
[r] In lib. i. annal. Enn. [p. 57. ed. 4to. Lugd. Bat. 1595.]
[s] De rep., lib. i. cap. 26. [p. 101.]
[t] [De jure et officiis bellicis, &c.] lib. i. cap. 3. [p. 44 seq. 8vo. Antv. 1597.]
[u] [De bello et duello.] lib. ii. cap. 8. [p. 294. 8vo. Tubing. 1616.]
[v] De singul. certam., cap. 3. [p. 3. 8vo. Ven. 1544.]
[w] De rep., lib. iv. cap. 7. [p. 745.]
[x] [Disp. de duello.] Conclus. 76. [sign. E 4. s. p. 4to. Arg. 1609.]
[y] De jure belli, lib. i. cap. 3. [p. 22 sqq. 8vo. Hanov. 1612.]
[z] [Vit. Dion., tom. iii. p. 330.]
[a] Juvenal. [sat. xiii. 189.]

tionabilis furor, as Lactantius[b] calls it; *inhumanum verbum est*, saith Seneca[c]; 'it is unreasonable, and inhuman, and brutish.' Οὐκ ἐφηδόμεθα, ὦ δέσποτα, τιμωρίας ἐχθροῦ, δεδιδαγμένοι πρὸς τῶν ἱερῶν νόμων ἀνθρωποπαθεῖν, said the Jews of Alexandria[d], 'we are not delighted in taking revenge against our enemies, because by the laws of God we are taught to have compassion on men.' And therefore is this much more to be observed in christianity, where we are all members one of another, united to Christ our head; and therefore we should comport ourselves as members of the same body: concerning which Cassiodore[e] says prettily, *Quod si manus una casu aliquo forte lædat alteram, illa quæ læsa est non repercutit, nec se erigit in vindictam*, 'if one hand strikes the other, it is not stricken again, neither doth the other think to be revenged;' as knowing it was too much that one was smitten.

§ 16. 2) It is lawful for a Christian to require of the magistrate to punish him that is injurious, if he justly fears a future and intolerable evil; for then it is but a calling to the law for a just defence, without which the magistrate should bear the sword in vain. Clemens Alexandrinus[f] defines τιμωρίαν or punishment (meaning that which is just, and in some cases reasonable to be required) to be κακοῦ ἀνταπόδοσιν εἰς τὸ τοῦ τιμωροῦντος συμφέρον ἀναφερομένην, 'a return of evil' (not for the vexing of the injurious, but) 'for the relief or commodity of the complainer.' But if it be that which Aristotle[g] defined it, τοῦ ποιοῦντος ἕνεκα, ἵνα ἀναπληρωθῇ, 'for the satisfaction of him that punishes,' that is, that he may have the pleasure of revenge, then it is intolerable. And therefore it must be always provided that this appeal respect the future only, and not that which is past; for that is revenge, and this is caution and defence.

§ 17. 3) In all repetitions of our rights which are permitted to Christians before christian judges, it is not lawful for Christians to take any thing for amends beyond the real loss or diminution of good: for that is a retribution of evil, which at no hand is permitted to a Christian. The Jews might receive fourfold, Christians must be content with simple restitution of their loss and real damages.

§ 18. 4) Christians must not go to law but upon very great cause[h]; and therefore some of the heathens, Musonius, Maximus Tyrius, and others would not allow ὕβρεως δίκην, any amends at law for reproachful or disgraceful words. And the Christians, who neither were nor ought to be behind them, desired not their calumniators to be pun-

[b] [Inst. div., lib. vi. cap. 18. tom. i. p. 485.]

[c] [De ira, lib. ii. cap. 32. tom. i. p. 84.]

[d] [Philo, adv. Flaccum, tom. ii. p. 534. fin. ed. Mangey.]

[e] De amicitia. [potius Petrus Blesensis de charitate, cap. 37,—max. bibl. vet. patr., tom. xxiv. p. 1233 H.]

[f] [Pædag., lib. i. cap. 8. p. 140.]

[g] [Rhet., lib. i. cap. 10. tom. ii. p. 1369.]

[h] [Compare Grotius, de jure belli et pacis, lib. ii. cap. 20. § 10.]

ished. So Justin Martyr[i], 'We will not those to be punished who do calumniate us: their own perverseness and ignorance of good things is enough already of calamity.' Μηδὲ μικρὸν ἀμείβεσθαι μηδένα βουλόμενοι, ὡς ὁ καινὸς νομοθέτης ἐκέλευσε[j], 'a Christian is commanded by Christ our new lawgiver not to be revenged, no not a little.' *Abstinere a litibus etiam plusquam licet*, said Cicero, 'we must abstain from suits of law, even far beyond our convenience:' and in the primitive church they took all honest things for commandments, and therefore did not think it lawful at all to go to law. Οὐ δικάζονται τοῖς ἁρπάζουσι, said Justin Martyr[k] of them, 'they do not go to law with them that rob them[l].' But that it is lawful, the public necessities are a sufficient argument; and yet men for want of charity make more necessities than needs: for if charity be preserved according to its worthiest measures, there would be no suits of law but what are not to be avoided; that is, there would be none for revenge, but some for remedy and relief. And this was that which Musonius[m] said, ἀνελεύθερον καὶ πάνυ φιλόδικον κακηγορίας δικάζεσθαι, 'it is not ingenuous to be running to law upon every provocation, though by real injury:' μήτε ἄρχειν λοιδορίαν, μήτε ἀμύνεσθαι τοὺς λοιδοροῦντας, said Pythagoras, 'a wise man will neither revile his neighbour, nor sue him that does.' 'For good men,' said Metellus Numidicus[n], 'will sooner take an injury than return one:' and if we read the sermon of Maximus Tyrius[o] περὶ τοῦ εἰ τὸν κακῶς εἰπόντα ἀντιδικητέον, 'whether it may be permitted to a good man to return evil to the injurious?' it will soon put us either to shame, or at least to consider whether there be no command in our religion of suffering injuries, of patience, of longanimity, of forgiveness, of doing good for evil; and whether there be not rewards great enough to make amends for all our losses, and to reward all our charity; and whether the things of this world cannot possibly be despised by a Christian; and whether peace and forgiveness do not make us more like to God and to the holy Jesus. Certainly if a Christian be reproached, railed at, spoiled, beaten, mutilated, or in danger of death, if he bears it patiently and charitably, he may better say it than Achilles did in Homer[p],

—— Φρονέω δὲ τετιμῆσθαι Διὸς αἴσῃ,

'I hope for this charity to be rewarded by God himself.' If a man have relations, and necessities, and obligations by other collateral duties, he must in some cases, and in many more he may defend his goods by the protection of laws, and his life and limbs; but in no

[i] [Apolog. i. § 7. p. 47 D.]
[j] [Dial. cum. Tryphon., § 18. p. 118 C.]
[k] [Potius Athenag., legat. pro Christian., cap. i. apud Justin., p. 280 D.]
[l] Vide Great Exemplar, part. ii. [sect. 12. vol. ii. p. 155.]
[m] Apud Lysiam. [in Theomnest., orat. i. § 2.]
[n] [Apud Aul. Gell. noctt. Attic., lib. xii. cap. 9.]
[o] Serm. ii. [al. xviii. tom. i. p. 338 sqq.]
[p] [Iliad. I. 604.]

case may he go to law to vex his neighbour: and because all lawsuits are vexatious, he may not go to law, unless to drive away an injury that is intolerable, and that is much greater than that which is brought upon the other.

§ 19. 5) When a Christian does appeal to christian judges for caution, or for repetition of his right, he must do it without arts of vexation, but with the least trouble he can; being unwilling his neighbour should suffer any evil for what he hath done. *Omnia prius tentanda quam bello experiundum:* 'he must try all ways before he go to this;' and when he is in this, he must do it with as little collateral trouble to his adversary at law as he can. To this belongs that of Ulpian[q], *Non improbat prætor factum ejus qui tanti habuit re carere, ne propter eam sæpius litigaret; hæc enim verecunda cogitatio ejus qui lites exsecratur non est vituperanda.* A man must be modest and charitable in his necessary suits at law; not too ready, not too greedy, not passionate, not revengeful: seeking to repair himself when he must needs, but not delighting in the breaches made upon his neighbour.

§ 20. In order to this, it would prevent many evils, and determine many cases of conscience, or make them easy and few, if evil and rapacious advocates that make a trade, not to minister to justice, but to heap up riches for themselves, were not permitted in commonwealths to plead in behalf of vicious persons and manifest oppressors, and in causes notoriously unjust. Galeatius Sforza duke of Milan being told of a witty lawyer that was of evil employment, a patron of any thing for money, employing his wit to very evil purposes, sent for him, and told him that he owed his painter a hundred crowns, and was not willing to pay him; and therefore asked him if he would defend his cause in case the painter should require his money at law. The advocate promised him largely, and would warrant his cause; which when the duke heard from his own mouth, he caused him to be hanged. The action was severe, but strangely exemplary. I have nothing to do with it, because I am not writing politics, but cases and rules of conscience: but I have mentioned it as a great reproof of all that which makes causes and suits of law to be numerous; which is a great sign of corruption of manners, if not of laws, in any place; but amongst Christians it is a very great state of evil. And therefore Charles the ninth of France made an edict that whosoever began a suit at law should pay into the finances two crowns; which if his cause were just he should lose, if it were unjust the law would sufficiently punish him besides: but even upon a just cause to go to law, is not the commendation of christian justice, much less of charity. Οὐκ εἶεν ἄν ποτε πολῖται φίλοι, ὅπου πολλαὶ μὲν δίκαι ἐν ἀλλήλοις εἶεν, ἀλλ' ὅπου ὡς ὅτι σμικρόταται καὶ ὀλίγισται, 'then charity is best preserved amongst citizens, not when there are most decisions of causes, but when the suits are fewest.'

[q] [Digest., lib. iv. tit. 7. l. 4. § 1.]

RULE VII.

IT IS NOT LAWFUL TO PUNISH ONE FOR THE OFFENCE OF ANOTHER, MERELY AND WHOLLY.

§ 1. *Quod tute intristi, tibi comedendum est*[q], said the comedy. As you knead, so you must eat; and he that eats sour grapes, his teeth only shall be set on edge. This is the voice of nature, of God, of right reason, and all the laws, and all the sentences of all the wise men in the world; and needs no further argument to prove it. But there are in it some cases which need explication;

1) Concerning persons conjunct by contract;
2) In persons conjunct by nature;
3) In them which are conjunct by the society of crime.

For in all these one is punished for the fault of another; but how far this can be just and lawful, are useful enquiries in order to the conduct of conscience.

§ 2. 1) The first enquiry is concerning persons conjunct in contract; such as are pledges in war, sureties for debt, undertakers for appearance, and the like. Concerning pledges in war, it hath been sometimes practised in warlike nations to put them to death when their parties have broke their promise. The Thessalians killed two hundred and fifty[r], the Romans three hundred of the Volsci[s], and this they might do by the law of nations; that is, without infamy and reproach, or any supposed injustice; they did practise it on either side. But the thing itself is not lawful by the law of God and nature, unless the pledges be equally guilty of the crime. When Regulus was sent to Rome to get an exchange of prisoners, and himself upon his promise was engaged to release them, or to return himself; when he persuaded the Romans not to release the African prisoners, the Carthaginians had reason to account him guilty as his country. But when the pledges are not, it is against the law of nature to put to death the innocent. For either the pledges are violently sent in caution against their wills, or with them. If against, then the wrong is apparent, and the injustice notorious. If with their will, it is to be considered it is beyond their power; for *Nemo membrorum suorum dominus videtur*, saith the law, *l. 'Liber,' ff. ad legem Aquiliam*[t]: and therefore it is that in criminal causes, where corporal punishment is inflicted, no man is permitted to be surety for another, but in civil causes he may; because no surety may lawfully be put to death for the principal, as is noted by the

[q] [Terent. Phorm., act. ii. sc. 1. 4.]
[r] [Plutarch. de virt. mulier., tom. vii. p. 6.]
[s] [Dionys. antiq. Rom., lib. vi. cap. 30.]
[t] [Digest., lib. ix. tit. 2. l. 13.]

gloss *in cap.* '*Cum homo*,' 23. *q.* 5[u]. The reason is plain: he that is surety for another can engage nothing of which he is not the lord, and over which he hath no power; and therefore he cannot lay his body, his life, or limb, at stake. No man hath power to engage his soul for the soul of another, that is, so as to pay his soul in case of forfeiture to acquit another; for it is not his, it is another's; it is His who hath purchased it and is Lord over it, that is Christ: and so is our body redeemed by the blood of Christ, "For ye are bought with a price, and therefore glorify God in your body and in your spirit, which are God's," saith the apostle[x]. Now this is so to be understood, not that one man may not feel the calamity which the sin of another can bring upon him; but that the law cannot inflict corporal punishment upon any relative, so as the criminal shall escape, and the law be satisfied as if the offending person had suffered. If a father be a traitor, the law may justly put him to death though the wife will die with sorrow: but the law cannot put the wife to death, or the son, and let the husband go free. One relative may accidentally come into the society of another's punishment, not only if they be partners of the crime, but though one be innocent; but one cannot pay it for the other and acquit him. This I say is to be understood in corporal punishments.

§ 3. But in pecuniary punishments the case is otherwise. For a man is lord of his money, and may give it away, and therefore may oblige it; and he that is surety for another's debt, gives or lends it to him that is principally obliged; and therefore it is just to take it, and the surety hath power to do it. But by the way it is observable that the surety can only oblige his money, or himself to the payment of his money: but when the creditors had power to torment the insolvent debtors, no man could give himself a surety directly for that torment; but by making himself a debtor, he did by consequence make himself criminal if he did not pay, and so might with as much justice be tormented as the principal debtor.

§ 4. But the whole business is unreasonable as to this instance, and therefore the enquiry is soon at an end, and the case of conscience wholly different; for in this particular it is not only unlawful to punish the surety with corporal punishment, but even the principal that is insolvent is to be let alone. If he fell into poverty by his prodigality, the law may punish that as she please; or if he intends to defraud the creditor, he may be punished or constrained to pay: but if he fall into poverty ἐκ τοῦ συμβεβηκότος καὶ οὐ ῥᾳθυμίᾳ, as Justinian's expression is, 'by unavoidable accident, not by impious courses,' it is against justice and charity to put him to trouble.

§ 5. Concerning which, though it be not pertinent to this rule, but here only well occasioned, I shall give this short account, that at once I may be wholly quit of this particular. In the laws of

[u] [Gratian. decret., part. 2. caus. xxiii. quæst. 5. cap. 19. col. 1464.]
[x] [1 Cor. vi. 20.]

the twelve tables it was permitted to creditors to imprison, to torment, to put their insolvent debtors to death; and if they were many of them they might cut the body in pieces, and every man go away with his share. *Nihil profecto immitius, nihil immanius,* says A. Gellius[y], *nisi, ut reipsa apparet, eo consilio tanta immanitas pœnæ denuntiata est, ne ad eam unquam perveniretur:* 'it was an intolerable and cruel justice, and only therefore published in so great a terror that it might never be put in execution:' and indeed, as he observes, it was never practised.

§ 6. But *addici nunc et vinciri multos videmus,* saith he; that was the next cruelty. The debtors were sold and all their goods; even kings, subject to the Roman empire, were with their crowns and purple, their sceptre and royal ensigns, published by the crier, and made slaves to pay their debts. The king of Cyprus was so used, as Cicero in his oration *pro Sextio*[z] sadly complains. The dividing the body of the debtor was changed into the dividing of his goods; but this also was hateful, and complained of by wise and good men. *Si funus id habendum sit quo non amici conveniant ad exequias cohonestandas, sed bonorum emptores ut carnifices ad reliquias vitæ lacerandas ac distrahendas,* said Cicero[a]: and Manlius[b] most worthily, seeing a Roman led to prison like a slave for debt, cried out, *Tum vero ego nequicquam hac dextra capitolium arcemque servaverim, si civem commilitonemque meum, tanquam Gallis victoribus captum, in servitutem ac vincula duci videam:* 'to what purpose did I save the capitol, if a citizen and my fellow-soldier shall for debt be made a slave as if he were taken prisoner by the Gauls?' and therefore he paid the debt and dismissed the prisoner.

§ 7. But because this was cruel and inhuman, when Petilius and Papirius were consuls a law was made that all the goods and possessions of the debtors should be obnoxious to the creditors, but not his body; but yet so that the debtors did work for their creditors, but not in chains: and this lasted till the *lex Julia* decreed (in Augustus his time) that the insolvent debtors might quit all their goods, but neither suffer chains, nor slavery, nor do labour for their creditors: but the benefit of this law extended not to prodigal and vain persons, but to those only *qui vi majore aliqua fortunis evertebantur*[c], (that was their word) 'who were undone by any great violence,' by shipwreck, or fire, or any accident unavoidable. For as for others, they were delivered to the capital triumvirate and punished *ad columnam Mœniam,* that is, whipped extremely[d]; and this continued until the time of Gratian the emperor, who decreed that such debtors who were not *eversi per vim majorem,* should not receive any benefit by quitting all their goods; but if they were less

[y] Lib. xx. [cap. 1.]
[z] [cap. 27.]
[a] Oratione pro Quintio. [cap. 15.]
[b] Apud Livium, lib. vi. [cap. 14.]
[c] L. i. C. Theod. [infra.]
[d] Vide Rævardum ad Ll. xii. tabul., c. 8. [p. 41. ed. 4to. Helmest. 1662.]

than their debt, *ad redditionem debitæ quantitatis congrua atque dignissima suppliciorum acerbitate cogantur*[e], they should be compelled by torment to pay a due proportion: and in this there might be severity; but it had in it very much of justice. But for the other part of it, of the entire cession of goods, and that the insolvent miserable debtor should be exposed to starving, this had neither charity in it nor justice; and therefore after much complaining, and attempts of ease, it was wholly taken away by the emperors Constantine[f], Gratian[g], and Justinian, *Novel.* 135[h]. Ποῦ γὰρ δίκαιον τὸν ἅπαξ ἐκ τοῦ συμβεβηκότος καὶ οὐ ῥᾳθυμίᾳ παραδιδομένῃ ἐκτὸς τῶν αὐτοῦ γεγονότα, αὖθις ἀσχήμονα τὸν βίον ἑαυτῷ παρατιθέναι, καὶ τῆς ἐφημέρου τροφῆς, ὡς εἰκὸς, τῆς τε τοῦ σώματος σκέπης ἔξω βιαίως καταστῆναι· 'it is infinitely unjust that he who is fallen into poverty without his fault should be constrained to live a shameful life, without his daily bread, and the necessary provisions for his back:' and then it was ordered that if the debtor did *ejurare bonam copiam*, that is, 'swear that he had not goods sufficient to pay the debt,' he should be free.

§ 8. This was made into a law long before the time of Gratian; when Sylla was dictator Popilius demanded it, and it was decreed. But tyrants usually make good laws, and after they are dead are so hated, that even their good laws are sometimes the less regarded: and so it happened in this particular; in so much that Cicero[i] spake against L. Flaccus for desiring to have Sylla's laws confirmed. But it soon expired through the power of the rich usurers, as we find by the complaint of C. Manlius in Sallust[k]; and even so long as the *lex Popilia* did prevail, yet they had arts to elude it: for though they could not bind the debtors in public prisons, yet they would detain them in their own houses; and though it was a great and an illegal violence, yet the poor man's case is last of all heard, and commonly the advocates and judges have something else to do.

§ 9. This is a perfect narrative of this affair; in all which it is apparent that wise and good men did infinitely condemn the cruel and unjust usage of insolvent debtors who were *per vim majorem eversi*, not poor by vice, but misfortune and the divine providence. The violence and the injury is against natural justice and humanity, or that natural pity which God hath placed in the bowels of mankind; as appears by the endeavours of the wiser Romans to correct the cruelty of creditors. But the debtors, though by degrees eased, yet were not righted till christianity made the laws, and saw justice and mercy done. S. Ambrose[l] complained most bitterly of the

[e] Cod. Theod. Qui bon. ex leg. Jul. ced. [lib. iv. tit. 20. l. 1.] et l. 'Si victum,' ff. de re judic. [Digest., lib. xlii. tit. 1. l. 34.]

[f] Lib. 2. C. de exact. tribut., lib. x. [tit. 19.]

[g] [Ubi supra.]

[h] [Authent. coll., ix. tit. 18. in præfat.]

[i] In Rullum. [de leg. agr., orat. iii. cap. 2.]

[k] In Catilin. [cap. 33.]

[l] Lib. de Nabuthe, cap. v. [tom. i. col. 570 E.]

creditors in his time; *Vidi ego pauperem duci dum cogeretur solvere quod non habebat; trahi ad carcerem quia vinum deesset ad mensam potentis; deducere in auctionem filios suos ut ad tempus pœnam differre posset: invento forte aliquo qui in illa necessitate subveniret, &c.* 'I have seen a poor man compelled to pay what he had not to pay, and dragged to prison because his creditor had not wine enough to drink; and to defer his punishment awhile, forced to sell his sons at an outcry.' *Grandis culpa est,* saith he, *si te sciente fidelis egeat, si scias eum sine sumptu esse, famem tolerare, . . et non adjuves; si sit in carcere, et pœnis et suppliciis propter debitum aliquod justus excrucietur* [m]: 'it is a great fault, if when you know it, you suffer a faithful man to want meat and provisions; if a just or good man be in prison, and in chains or torments for debt.' Now if persons not interested in the debt might not suffer such a thing to be and abide, much less might any Christian do such a thing. If every man that could was bound to take off the evil, it is certain it was infinitely unlawful to inflict or to lay it on: and therefore the remains of this barbarity and inhumanity amongst us does so little argue christianity to be amongst us, that it plainly proves that our religion hath not prevailed so far upon us as to take off our inhumanity.

§ 10. Of the same nature is that barbarous custom of arresting dead bodies, and denying them the natural rights of burial till a debt be paid. Ascelinus Fitz-Arthur arrested the body of William duke of Normandy, conqueror of England, upon something a like account. But S. Ambrose[n] blames such unnatural cruelty, and derides the folly of it; *Quoties vidi a fœneratoribus teneri defunctos pro pignore, et negari tumulum dum fœnus exposcitur? Quibus ego acquiescens dixi, Tenete reum vestrum, et ne vobis possit elabi, domum ducite; claudite in cubiculo vestro carnificibus duriores: quoniam quem vos tenetis, carcer non suscipit, exactor absolvit;* 'to them who seized on dead bodies for their debt, I called out, Hold fast your debtor, carry him home lest he run away, O ye that are more cruel than hangmen.' But of this sufficient: for whatsoever is against the law of nature, to have named it is to have reproved it. Only there is one case in which if dead bodies be arrested for debt, I cannot so much complain of it; and that is in the customs of France, where they never imprison any alive for a debt, unless he be expressly condemned to it by the sentence of the judge, or contracted upon those terms with the creditor: but when the man is dead they lay their claim, because they cannot hurt the man. This I find in Gaspar Beatius[o], who cites these verses for it out of Johannes Girardus[p], no ill poet, but a good lawyer.

[m] Offic., lib. i. [cap. 30. tom. ii. col. 39 E.]

[n] Lib. de Tobia, cap. x. [tom. i. col. 602 A.]

[o] [De debit. inop., cap. 1. in tractt. univ. jur., tom. iii. part. 2. fol. 208 a.]

[p] [Centur. v. epigr. 42. p. 66 b. ed. 8vo. Lugd. 1558.]

Heus principes, duodecim
Tabulæ inopem crudeliter
Quæ debitorem dissecant,
Aut jura, mores publici,
Quæ carceribus illum misere
Et opprimunt et enecant,
Nimis mihi, nimis displicent.
Qui Gallum habuit mos bonus
Idem et vetus probabitur
Nimis mihi cuique et bono,
Quo creditores debita
Petant sibi post funera.

But I suppose he might speak this in jest, to represent the lenity of Frenchmen in not casting their debtors into prison. But if a debtor should, as Argyropilus, jesting at his death, make his rich friends the heirs of all his debts, it would spoil the jest.

Now I return to the other enquiries of the rule.

§ 11. 2) The second enquiry is concerning persons conjunct by nature; whether (for example sake) sons or nephews can be punished for the faults and offences of their fathers and grandfathers. Concerning this, I find Paulus the lawyer and Baldus speaking exact antinomies. For Baldus *in l.* '*Id quod pauperibus,*' *qu.* 9. *C. De episcopis et clericis*[q], affirms *hæredem teneri ad quam defunctus fuerat condemnatus,* 'the heir of his father inherits his father's punishment:' but Paulus *in l.* '*Si pœna,*' *ff. De pœnis,* says expressly *hæredem non teneri ad pœnam defuncti,* 'the heir is not bound to suffer the punishment of the dead[r].' But they are both in the right: for the heir is not tied to suffer the corporal punishment to which his father was condemned, because his father had no dominion over his son's body or his own; but over his goods he hath, and therefore can transmit these with their proper burden: and therefore the heir is liable to pay the fine to which his father was sentenced, and to pay his father's debts, and is liable to the same compulsion, with this only caution, that if the father be under torment or imprisonment for insolvency, the son be no way obliged to that; because whether the insolvency of the father be by his fault or his misfortune, still the son is not obliged: for as he is not bound by his father's personal fault to suffer personal punishment, so neither for his misfortune can he be obliged beyond the suffering of a descending poverty. If his father was insolvent by his crime, the punishment was to go no further than the fault, and therefore no torment was entailed: but if he were insolvent by misfortune, neither the father nor the son for that could deserve any further evil; and if the father transmitted no goods, no advantage to the son, there is no reason he should transmit a burden: *Nemo fiat deterior per quem melior factus non est,* says the law. And

[q] [In Cod. Justin., lib. i. tit. 3. l. 24.] [r] [Digest., lib. xlviii. tit. 19. l. 20.]

therefore S. Ambrose[s] complained of a sad sight he saw; *Vidi ego miserabile spectaculum, liberos pro paterno debito in auctionem deduci, et teneri calamitatis hæredes, qui non essent participes successionis; et hoc tam immane flagitium non erubescere creditorem,* 'I have seen sons sold slaves for their father's debt, from whom they were never like to receive an inheritance;' and which is yet more strange, 'the creditors were not ashamed of the impious cruelty.' But this is a ruled case both in divinity and law. *Nunquam unus pro alio potest pœna corporis puniri,* said Alexander of Hales[t], and Thomas Aquinas[u], 'no man can suffer corporal punishment in the place of another:' the same with that in the law, *l. 'Crimen' ff. De pœnis*[v]. And therefore of all things in the world, conjunction of nature, which should be a means of endearment, and the most profitable communications, ought not to be an instrument of the communication of evil. *Unius factum alteri qui nihil fecit non nocet, l. 'De pupillo,' 5. § 'Si plurium.' ff. Nov. op. nunt.*[x] And again, *Peccata suos teneant auctores, nec ulterius progrediatur metus quam reperiatur delictum, l. 'Sancimus,' 22. C. De pœnis*[y]. But it is expressly instanced in this matter of succession, *Unusquisque ex suo admisso pœnæ subjiciatur, nec alieni criminis successor teneatur,* 'the son may succeed in his father's burdens and misfortunes, but not in his crimes or corporal punishments. *l. 'Crimen,' ff. eod.*[z]

§ 12. 3) And this is the measure of the third enquiry. For they who are conjunct in crime, are equally obnoxious to punishment; and therefore if one be punished for the fault of another, it is just to him that is punished, and mercy to them that are spared. For when all are criminal, all are liable to punishment, and sometimes all do suffer. So did the Campanian legion that rebelled at Rhegium[a], and possessed the town for ten years; they suffered every man, four thousand heads paid for it. So did the ninth legion under Julius[b], and the tenth legion under Augustus[c], every man was punished. For the rule of the law is, *Quod a pluribus pro indiviso commissum est, singulos in solidum obligat, l. 'Semper,' § 2. ff. Quod vi aut clam*[d], *et l. 'Item Mela,' § 2. ff. ad legem Aquiliam*[e]. When every man consents to the whole crime, every man is wholly criminal. If ten thieves carry away a load of iron, every man is tied to the punishment of the whole. But sometimes only the principals are punished. Thus at Capua[f] seventy princes of the senate were put to death for

[s] Lib. de Tobia, cap. viii. [tom. i. col. 600 A.]
[t] 3. p. q. 41. in 4. a. 4. corollar. 3. [fol. 157 a. ed. fol. 1516.]
[u] In 2. 2ᵃᵉ. q. 108 a. 4. ad 2. [p. 201. ed. fol. Col. Agr. 1622.]
[v] [Digest., lib. xlviii. tit. 19. l. 26.]
[x] [Digest., lib. xxxix. tit. 1. l. 5.]
[y] [Cod. Justin., lib. ix. tit. 47. l. 22.]
[z] [Digest., lib. xlviii. tit. 19. l. 26.]
[a] Livius, lib. xxxviii. [potius epit. lib. xv. cf. Polyb. i. 7; Oros. iv. 3.]
[b] Sueton. in Julio. [cap. 69.]
[c] In August. [cap. 24.]
[d] [Digest., lib. xliii. tit. 24. l. 15.]
[e] [lib. ix. tit. ii. l. 11.]
[f] Livius, lib. xxxvi. [lege xxvi. cap. 16.]

rebelling against the Romans, and three hundred of the nobility were imprisoned, and two hundred and twenty-five of the Sorani. And this way is often taken by princes, and wise generals, and republics, *ut unde culpa orta esset ibi pœna consisteret.* And C. Decimius[g] was heard with great applause, when in the case of the Rhodians he affirmed that the fault was not in the people, but in their principals and incendiaries; meaning, it was not so in the people as in their leaders. And in tumults it often happens as it did at Ephesus, when S. Paul had almost been torn in pieces with the people: the greater part knew not why they were come together, but all were in the tumult; and in such cases it is justice that one be punished for many, a few for all: and therefore S. Ambrose did highly reprove Theodosius the emperor for killing seven thousand of the Thessalonians for a tumultuary rescuing a criminal from the hand of the magistrate, and killing the governor and some great officers in the sedition. Sometimes the criminals were decimated by lot, as appears in Polybius[h], Tacitus[i], Plutarch[k], Appian[l], Dio[m], Julius Capitolinus[n], who also mentions a centesimation. And the reason of this equity Cicero well discourses in his oration *pro Cluentio*[o], *Ut metus, viz., ad omnes, pœna ad paucos perveniret,* 'that some may be punished, and all may be made to fear:' for the soldiers being made to fear the bigger fear of their generals, would never fear the less fear of the enemy, who does not strike so surely as the executioner; and therefore they might afterwards become good men and good citizens. But because in public offences the cases may be different, they are by this measure reduced to reason.

§ 13. If the tumult or war be by the command of magistrates, the people are to be affrighted, or admonished, but the commanders only are to be punished. *Ne alieni admissi pœnam luant quos nulla contingit culpa, l. ult. ff. De bon. damnat.*[p] For the people are soon commanded by him that stands next above them. And therefore since to obey is like a duty, it is not easily to be reckoned to a real crime, and the greatest punishment.

§ 14. But if the fault be done by the people without authority or excuse, but just as fire burns a house by chance, or water breaks a dam by its mere weight, then it is to be considered whether the criminals be many or few: if few, they may all be punished without breach of equity, upon the account of the rule of the law, *Quæ pœna delictis imposita est, si plures deliquerint, a singulis in solidum debetur, l. 'Item Mela.' ff. ad leg. Aquil.*[q] But if many were in the crime, then the rule of equity and the gentleness of the law is to

[g] Id., lib. xlv. [cap. 10.]
[h] Lib. vi. hist. [cap. 38.]
[i] [Annal.] lib. xiv. [cap. 44.]
[k] In Crasso. [tom. iii. p. 431.]
[l] Bell. civil., lib. ii. [capp. 47, 63, 94.]
[m] Lib. xlviii. [cap. 42; lib. xlix. capp. 27, 39.]
[n] In Opilio Macrino. [p. 231. ed. 8vo. Par. 1544.]
[o] [cap. 46.]
[p] [Digest., lib. xlviii. tit. 20 l. 7.]
[q] [Digest., lib. ix. tit. 2. l. 11.]

take place, *Ut pœnæ interpretatione potius molliantur quam exasperentur,—leg. pen. ff. de pœnis*[r], a few should be punished for all the rest, *ut supersint quos peccasse pœniteat.* For it is of great avail for the public interest, that as some be cut off, so some should remain alive, that they may repent. And in this sense is that of Lucan[s],

——— quicquid multis peccatur inultum est.

Besides that it is evil to the commonwealth to lose so many subjects, it is also sometimes dangerous;

——— sed illos
Defendit numerus junctæque umbone phalanges[t].

The determination of these two particulars I learn from Cicero in his oration *pro Flacco*[u], *Vobis autem est confitendum, si consiliis principum vestræ civitates reguntur, non multitudinis temeritate sed optimatum consilio bellum ab istis civitatibus cum populo Romano esse susceptum:* 'if the nobles govern your cities, then the nobles made the war, and the people are innocent.' *Sin ille tum motus est temeritate imperitorum excitatus, patimini me delicta vulgi a publica causa separare;* 'but if the rabble did the fault, the city is not to be punished; it is not a public offence.' *Multitudo peccavit, sed non universitas.* For a rabble does not make a city, a people, or a republic: for to make this, it must be *cœtus qui jure aliquo continetur, l. 'Metum,' § 'Animadvertendum.' ff. Quod met. caus.*[v]; a multitude under government and a legal head.

§ 15. But if both the magistrates and the people be in the offence, *culpa est penes paucos concitores vulgi*, said C. Decimius[x]; it is better that the ringleaders and the *boutefeus* should lie at stake, and feel the severity, while the other are instructed and preserved by the gentleness of laws and princes.

There are some other questions and cases of conscience concerning penal laws; but they can with more propriety be handled under other titles, and therefore I shall refer them to their several places. But for the likeness of the matter I have here subjoined some rules concerning the measures and obligations of conscience in the matter and laws of tribute.

[r] [lib. xlviii. tit. 19. l. 42.]
[s] [lib. v. 260.]
[t] [Juv. sat. ii. 45.]
[u] [cap. 24.]
[v] [Digest., lib. iv. tit. 2. l. 9. § 1.]
[x] [ubi supra.]

OF LAWS OF TRIBUTE.

RULE VIII.

THE LAWS OF TRIBUTE ARE MORAL LAWS, AND NOT PENAL, EXCEPT IT BE BY ACCIDENT; AND THEREFORE DO OBLIGE THE CONSCIENCE TO AN ACTIVE OBEDIENCE.

§ 1. HIM to whom we pay tribute we owe obedience to. It is S. Paul's[y] argument to prove that we ought to obey the powers that are set over us, because to them we pay tribute; which tribute is not introduced by tyranny, but is part of that economy by which God governs the world by His deputies and lieutenants, the kings and princes of the earth. *Nec quies gentium sine armis, nec arma sine stipendiis, nec stipendia sine tributis haberi possunt,* said Tacitus[z]: 'no peace without laws, no laws without a coercitive power, no power without guards and soldiers, no guards without pay:' and that the soldiery may be paid, and the laws reverenced, and the power feared, and every man's right be secured, it is necessary that there be tribute[a]. *Ut sit ornamentum pacis, subsidium belli et nervus reip.*[b]—*Tributum est pecunia populo imperata quæ tributim a singulis pro portione census exigebatur,* said Varro[c]. But besides this the very paying tribute is the sign and publication of our subjection. It is a giving him that which is his own: for he that coins the money hath the power of the law, and this from the custom of the world for many ages. The Persians first imprinted the figure of their prince upon their money, after them the Greeks: hence were those names of coin, the Darics and Philippics; for the money having the impress and figure of the prince, the name and the value from the prince, is a seizure and solemn investiture in the government of that people: and our blessed Lord was pleased from hence to argue that therefore they ought to pay tribute to Cæsar; because what way soever he came first to it, Christ does not there dispute, but he was over them, and he protected them in peace, righted their causes, relieved their oppressions, stamped their money, gave value to that and protection to them, and therefore they were bound to pay their tribute. It was *res Cæsaris,* as He was pleased to call it, 'the things of Cæsar;' it was due to him for the public ministry of justice: and this is also urged by S. Paul, "for they are God's ministers, watch-

[y] [Rom. xiii. 6.]
[z] [Hist., lib. iv. cap. 74.]
[a] Ad hoc tributa præstamus, ut propter necessaria militi stipendium præbeatur.—S. Aug., lib. xxii. cap. 74. contr. Faust. Manich. [tom. viii. col. 405 C.]
[b] Cicero pro leg. Manilia. [capp. 2, 7.]
[c] [De ling. Lat., lib. iv. prope fin.]

ing for this very thing," that is, for your good; and therefore are to be maintained according to the dignity of that administration.

§ 2. Now as we owe tribute to whom we owe obedience, so we owe obedience to whom we owe tribute: that is, if he have authority to exact tribute, we are bound in conscience to pay it. It is a law as much obliging the conscience as any other. *Numus* or *nummus* from *Numa*, say the Roman critics[d]; because king Numa first stamped money amongst them. But I suppose it is from a Greek fountain, *numus* and *numisma* from *νόμισμα*, and that, says Aristotle[e], is *ἀπὸ τοῦ νόμου*, 'from the law;' for he that stamps money gives the law; and amongst others, and for the defence of all laws, this law of paying money to him by way of tribute is obligatory.

§ 3. And the case does not differ by what name soever it be imposed; *vectigal, tributum, census, τέλος, φόρος*, were the words amongst the Greeks and Latins, and did signify portions of money paid from lands, from merchandise, for heads; *excisum quid*, 'something that is cut off' from the whole, for the preservation of the rest; that's excise money: but whatever the words be, S. Paul reckons them all to be *τὰς ὀφειλὰς*, 'due debt;' and therefore *ἀπόδοτε*, saith our blessed Lord[f], *ἀπόδοτε*, saith S. Paul[g], 'restore,' or 'pay it;' it is a debt due by the ordinance of God. It is all but tribute; even the *census* or poll money[h] is tribute: so it is called by Ulpian, *l.* 3. *ff. de censibus*[i], *tributum capitis*, 'the tribute of the head.' The same use of the word I have observed out of Ammianus and Tertullian. This I the rather note, that I might represent the obligation to be all one by the law of God, though the imposition be odious and of ill name amongst the people, according to that saying of Tertullian[j], *Si agri tributo onusti viliores, hominum capita stipendio censa ignobiliora*, 'fields under contribution are cheaper, and men under a tax are more ignoble.' *Angaria* is another sort of tribute; an imposition of work and upon the labours of the subject. It is indeed the worst and the most vexatious; but it is *species tributi*, 'a kind of tribute,' and due by the laws of religion, where it is due by the laws of the nation: and therefore those persons are very regardless of their eternal interest, who think it lawful prize whatever they can take from the custom-house; whereas the paying of tribute is an instance of that obedience which is due to them that are set over us, "not only for wrath, but also for conscience sake," and S. Paul never uses the word 'conscience,' but when it is the concern of a soul. It is S. Ambrose his observation, who also uses this argument[k], *Magnum quidem est et spiritale documentum, quo christiani viri sublimioribus potestatibus docentur esse subjecti, ne quis constitutionem ter-*

[d] [Sueton. teste Suida, in voc. Ἀσσάρια.]
[e] Lib. v. eth. cap. 8. [tom. ii. p. 1133.]
[f] [Matt. xxii. 21.]
[g] [Rom. xiii. 7.]
[h] ['pole money' edd.]
[i] [Digest., lib. l. tit. 15. l. 3.]
[j] In apolog. [cap. xiii. p. 13 D.]
[k] In 1 Reg. 14; 11. q. 1. c. 28. [Gratian. decret. part. 2. caus. xi. quæst. 1. cap. 28. col. 985.]

reni regis putet esse solvendam. Si enim censum Dei filius solvit, quis tu tantus es qui non putes esse solvendum? 'it is a great and a spiritual doctrine that Christians be subject to the higher powers: for if Christ paid tribute, what art thou, how great, how mighty, that thou thinkest thou art not obliged?'

RULE IX.

THE LAWS OF TRIBUTE HAVE THE SAME CONDITIONS, CAUSES, POWERS AND MEASURES, WITH OTHER LAWS OF GOVERNMENT.

§ 1. This rule requires[k] that the authority be supreme, that the cause be just, that the end be public, that the good be general, that the people receive advantage. Which is to be understood of tribute which is not penal, nor compensatory. For sometimes tributes are imposed upon a conquered people[l] as fetters upon a fugitive, to load him that he run away no more; or to make amends for the charges of a war. If they were in fault, they must bear the punishment; they did the evil, they must suffer the evil: that at the charge of the conquered themselves also shall enjoy peace. So Petilius said to the Gauls[m], *Nos, quanquam toties lacessiti, jure victoriæ id solum vobis addidimus quo pacem tueremur,* 'you have provoked us, and we have conquered you; and yet have only imposed the punishment of so much tribute on you, that at your charge we will keep the peace.' So concerning the Greeks Cicero[n] affirms that they ought to pay some part of their fruits, that at their own expenses they be restrained from undoing themselves by civil wars.

§ 2. But then this is at the mercy and good will of the conqueror; for the tribute he imposes upon them as punishment, he is so the lord of it, that however he dispose of it, it must be truly paid. And the same is the case of a tribute imposed by way of fine upon a city or society: the supreme power is not bound to dispense that in public uses; and if he does not, yet the subject is not at liberty in his

[k] Vectigalia sine imperatorum præcepto, neque præsidi, neque curatori, neque curiæ constituere, nec præcedentia reformare, et his vel addere vel diminuere licet,—ff. de publican., l. 10. [Digest., lib. xxxix. tit. 4. l. 10.]

Vectigalia nova nec decreto civitatum institui possunt,—Sever. C. de vectigal. nov. instit. non poss. l. 2. [Cod. Justin., lib. iv. tit. 62. l. 2.] et Gallien. l. seq. ait Non solent nova vectigalia inconsultis principibus institui. [ibid. l. 3.]

Placet nullum omnino judicem de cæteto provincialibus inferendum aliquid indicere, ut ea tantum sedulo cunctorum studio pensitentur, quæ canonis instituti forma complectitur, vel nostra clementia decernit inferenda, vel delegatione solemniter sanciente, vel epistolis præcedentibus,—Constantin. l. 8. C. de excusat. mun., lib. x. [tit. 47. l. 8.]

[l] [Deut. xx.]

[m] Tacit. hist., lib. iv. [cap. 74.]

[n] Lib. i. ad Quint. fratr., ep. 1. [§ 11.]

conscience whether he will pay it or no. For in this case it is not a law of manners but of empire; and is a private perquisite of the prince, as the prince himself can be a private person: which because it cannot be in any full sense or acceptation of a law, but in nature only, so neither can the tribute be of so private emolument, but it will at least indirectly do advantage to the public.

§ 3. In other tributes, such which are legal, public and universal, the tribute must be proportioned to the necessity and cause of it; it must be employed in that end to which it was imposed and paid (for that is a part of commutative justice), it must be equally laid; that is, as far as it can be prudently done, supposing the unavoidable errors in public affairs, in which so many are to be considered (for this is a part of distributive justice): and where there is a defailance in these, I mean a constant and notorious, there the conscience is disobliged (as far as the excess and injustice reaches) just as it is from the obedience to other laws that are unjust; of which I have given account in the third rule of the first chapter of this book[o]. But this I say is true in such tributes as are of public and common use. For those which are for the expenses and personal use of the prince, if he spends them well or ill the subject is not concerned; but only that he pay it according to the law and custom. In these the supreme power is a supreme lord, in the other he is but a supreme steward and dispenser.

§ 4. As the laws of tribute have their original and their obligation, so they have their dissolution as other laws have, with this only difference, that the laws of tribute, when the reason ceases, if they be continued by custom, are still obliging to the subject[p]; it being reason enough that the supreme power hath an advantage by it, which cannot be so personal but that it will, like the brightness of the sun, reflect light and heat upon the subject.

§ 5. Lastly, in the levying and imposing tribute, by the voice of most men, those things usually are excepted which are spent in our personal necessities. Whatsoever is for negotiation may pay, but not what is to be eaten and drunk. This tribute nevertheless is paid in Spain, for it is that which they call *alcavala;* and in Portugal, where it is called *sisa*. I suppose it is the same with the excise in England and the Low Countries; and yet is much spoken against for these reasons, *a*) because it is too great an indication or likeness to slavery, and an uningenuous subjection to pay tribute for our meat and drink and the necessaries of life; it is every day a compounding for our life, as if we were condemned persons, and were to live at a

[o] [p. 38.]

[p] Præterea cum pedagia, guidagia, salinaria tibi legatus interdixerit, auctoritate apostolica duximus declarandum, illa esse pedagia, salinaria, guidagia interdicta, quæ non apparent imperatorum, vel regum, vel Lateranensis concilii largitione concessa, vel ex antiqua consuetudine a tempore cujus non extat memoria introducta.—Innocent. III. de verb. signif. c. 'Super quibusdam.' § 1. [Greg. IX. decret., lib. v. tit. 40. cap. 26. col. 1787.]

price, or die with hunger, unless by our money we buy our reprieve. β) The other reason of the complaint made against this, is because by this means the poor and he that hath the greatest charge of children, and he that is the most hospitable to strangers and to the poor, shall pay the most, who yet of all men ought most to be eased. And upon these or the like reasons the civil law imposed gabels only upon merchandises for trade, and gain, and pleasure[q]. And of this opinion are generally all the canonists and most of the civilians, and very many divines: but when scholars come to dispute the interest of princes and the measures of their gain or necessities, they speak some things prettily but to no great purpose. In these and all other cases of this nature, kings and princes will do what they please; and it is fit they should, let us talk what we will, always provided that they remember they are to answer to God for their whole government; and how they should be enabled to make this answer with joy, they are to consult with the laws of God, and of the land, and with their subjects learned in them both: and that, above all men, princes consider not always what they may do, but what is good; and very often what is best. This only: tribute upon meat and drink is not of itself unjust, but it is commonly made so; for whether the tribute be paid only by the merchant, as in Castile and England, or by the merchant and him that spends them for his need, and not for his gain, as in Portugal; yet still the poor man is the most burdened in such cases: for the merchant will sell the dearer, and then the evil falls upon the poor housekeeper, contrary to the intention of all good princes; which if they will take care to prevent, I know nothing to hinder them, but that by the same rules which they observe in making other laws they may take their liberty in this.

RULE X.

TRIBUTE AND CUSTOMS WHICH ARE DUE ARE TO BE PAID WHETHER THEY BE DEMANDED OR NO.

§ 1. THIS is but the result of the former discourses. For if a tribute be just, it is due debt, and to be paid as any other: and human laws do not only make the paying tribute to be necessary in the virtue of obedience, for then unless the law expressed that it ought to be paid, though it be not particularly demanded, the subject not demanded were free; but the laws place this obedience in

[q] L. 'Universi.' C. de vectig. [cod. Justin., lib. iv. tit. 60. l. 5.] et l. 'Omnium.' C. eod. [ibid. l. 6.]

the form and matter of its proper kind of virtue; it is justice to pay it, and that must not be omitted at all: for our duty is not to depend upon the diligence of other men; and if the ministers of the prince be negligent, yet we must not be unjust. This is true in subjects and natives; but strangers are free, unless they be required to pay: always supposing that they go in public ways and with open address. For it is presumed that they are ignorant inculpably in the laws of the country, and they are less obliged; but therefore these defects are to be supplied by the care of them that are interested. But if they know it already, they are obliged as the natives according to the laws, and must not pretend ignorance in fraud and cozenage.

§ 2. But this also is to be understood of customs and tributes which are just. In which number those which are of an immemorial time and long use ever are to be presumed. Those which are newly imposed, may better be considered whether they be or no, because they want that approbation which is given to the old. But whatsoever are unjust, do not oblige to payment; and the merchant may use all just ways of escape and concealment. He may not lie, nor forswear, nor deny them to be there when they are there, and he is asked; but he may hide them, or go into secret ways: and if he be discovered, he must suffer as they please, but his conscience is free.

§ 3. He that pays not tribute upon pretence that it is unjust, that is, it is imposed by an incompetent authority, or in an undue manner, or unjust measure, must be sure that it is unjust, and not only think so. For if he be deceived, he does not err with a good conscience, unless he use all the diligence and ingenuous enquiries that he can. His ignorance must not, and cannot innocently, prejudice the prince's rights. If therefore he enquire well and wisely, unless the injustice be very clear and certain, he will at most but doubt concerning it; and if he does, the surer way is to pay it: but if he does not doubt, but is fully persuaded of the injustice, if he thinks true, he is innocent; but if he thinks amiss, he is not only guilty of a culpable ignorance, but of a criminal injustice.

§ 4. If the subject does doubt, the presumption is for the advantage of the prince, because he is the better person, and public, and he is rather to be secured than the private and the inferior. And therefore I wonder at those lawyers and divines that say otherwise, upon pretence that *in dubiis melior est conditio possidentis*, 'the possessor is to be preferred in doubtful cases.' For supposing this, yet the prince is in the possession of law, and the subject in possession of fact: the prince is in possession of an actual right and law of demanding it, and therefore his condition is to be preferred. For in the practice of paying tribute, it is not sufficient cause of omitting to pay it, that the subject doubts whether it be, or is not sure that it is just. For unless he be sure it is unjust it is sure that he is bound to pay. And therefore in this case, let no merchant trust his own

judgment, but the sentence of a wise spiritual guide, or of counsel learned in the laws.'

§ 5. One thing only I advertise in order to practice: let no man think that because some subjects farm the customs, and that the portion which is concealed does not lessen the incomes of the prince, therefore it may be lawful to hide from them all which they can hide. For the farmer hath what he gets in the right of the prince, and in his own right he hath nothing from the subject, but from his supreme, who therefore is bound to defend that right, and to complain of that wrong: and the husbandmen in the gospel who denied to pay to the stewards of the king the fruits of the vineyard which in their king's right were demanded of them, were thrown into outer darkness.

§ 6. But then, as S. John baptist[r] gave counsel, the tribute-men and farmers must 'exact no more than is appointed them;' nor yet in cruel and vexatious manners, nor with the exactest and utmost measures, but with such moderation as may be far from rapine. *Tributorum et fisci nunquam mala causa nisi sub bono principe,* was an old saying, 'whatsoever was demanded by the tribute-gatherers, it was all justice, whether it were right or wrong, unless the prince were gentle and good.' But the vulture-like greediness, and unconscionable, unchristian and avaricious proceedings which are too frequent amongst such men, have made the name of exactors and publicans[s] so infinitely, so intolerably hateful.

> Curandum in primis, ne magna injuria fiat
> Fortibus et miseris. Tollas licet omne quos usquam est
> Auri atque argenti, scutum gladiumque relinques
> Et jacula et galeam; spoliatis arma supersunt[t].

It is not good to provoke the valiant by making them poor and miserable; for they that have not a cloak may have a sword: and by how much you make them the less considerable in peace, they are the more dangerous in war. And therefore covetous princes are to themselves the greatest enemies, excepting only their more covetous exactors.

[r] [Luke iii. 13.]

[s] Quid est publicanus? Nonne caput rapinæ, et lex violentiæ? Quid est publicanus? Prædo sine pudore, medius exterminii. Nonne immanior furibus publicanus? Fur namque vel metuens furatur, hic autem delinquit confidenter. Fur laqueos tegit, timet, hic autem quicquid fecerit legem putat. Lex furem deterret ab illicitis, hic ad iniquum malitiæ suæ compendium legem trahit. Quis eo iniquior qui verbis justitiæ justitiam damnat, et armis innocentiæ spoliat, vulnerat, occidit innocentes? Lege utique legem pervertit, et dum urget ad legem exlex est.—Laurent. Episc. Mediol. in homil. [vid. de pœnit. hom. i. in max. bibl. vet. patr., tom. ix. p. 469 B.]

[t] Juvenal. sat. viii. [121.]

CHAP. III.

OF KINGS, PRINCES, AND ALL SUPREME CIVIL POWERS; AND THEIR LAWS IN SPECIAL.

RULE I.

THE SUPREME POWER IN EVERY REPUBLIC IS UNIVERSAL, ABSOLUTE, AND UNLIMITED.

§ 1. THAT in every commonwealth there is a supreme power is without all question. There is no government without superiority; and where there is a superior, there is a supreme, for he is so that hath none above him. It matters not whether this supreme power be subjected in one or many, whether it be parted or united: the consideration of these is material as to the goodness or badness of a government, but nothing to the power and absoluteness of it, nothing to the present rule. And therefore it is but a weak and useless distinction when we speak of kings and princes, (by them meaning the supreme power,) to say that some are absolute, some are limited in their power. For it is true that some princes are so; but then they are not the supreme power. It is a contradiction to say that the supreme power is limited or restrained: for that which restrains it is superior to it, and therefore the other is not supreme. And therefore Albericus Gentilis said well, that he doubted concerning the kings of France and Spain, whether they were supreme princes, because in the affairs of religion they are subject to the pope. He that hath the supreme power is only under God; and to enquire concerning a king, whether he be tied to laws or conditions, is not properly an enquiry after his power, but after the exercise and dispensation of it. For though he may not always use it, yet the supreme power always is absolute and unlimited, and can do what he please. The difference of a tyrant and a king or a gentle prince being only this, that a tyrant uses his absolute power unreasonably and unjustly, and ordinarily; but a king uses it not but in cases extraordinary, for just and good ends: and if the prince does not, some else must, who in that case is the supreme. Sometimes the consuls, sometimes the dictators, sometimes the senate did do extraordinary acts of power; but still they who did it had the supreme power:

and that is necessary and inseparable from government, that, I mean, which is supreme: ἄκραν ἐξουσίαν, κυρίαν ἀρχὴν, κύριον πολίτευμα, the Greeks call it; *majestatem*, the Latins: and be it in whom or in how many it happens, that power can do every thing of government, and disposes of all things in order to it, and is accountable to no man. For suppose a king that hath power of the militia, and his senate of making laws, and his people by their committees of raising money; this power of making war, and laws, and levies is the supreme power, and is that which can do all things: and although one be accountable for monies, and the other subject to laws, and two of them under the power of the sword, yet this is but the majesty or supremacy parted; and whether well or ill, I dispute not, yet when it is parted and when it is united, it is supreme and it is all. That government which Aristotle[a] calls Λακωνικὴ, δοκεῖ εἶναι βασιλεία τῶν κατὰ νόμον, οὐκ ἔστι δὲ κυρία πάντων, 'seems,' says he, 'to be a kingdom but yet subject to laws, but is not the mistress of all;' and this is true in many European governments, but there is another government where the governor is πάντων κύριος εἷς ὤν, 'lord of all, and but one person;' that's the perfect monarchy: which although it be incomparably the best, and like to that by which God governs the world, the first in the whole kind of government, and therefore the measure of the rest, yet that is no greater power than is in every kind of government; for be it where it will, somewhere or other in all government there must be a supreme power, and that power is absolute and unlimited. Now this being thus stated, the rule is clear, and the Jews expressed it by an odd device of theirs[b]: for when their king died they tied his thumb so in the palm of his hand, that the wrinkles of the fist should in a manner that might be fancied represent שַׁדַּי which signifies 'almighty;' to denote that he was God's vicegerent, and under Him had the whole power of government. He had had in his hand a power like to the power of God, but the other hand was open and had let it go.

§ 2. Now that this is true is apparent by all the same reasons by which the necessity of government is proved. It is necessary that it should be so; for there are some states of things for which nothing can provide but this *absoluta potestas*, 'supreme and unlimited power;' as at Rome when the Gauls had almost possessed themselves of all, and in many cases of their appointing dictators, and in sudden invasions, and in the inundation of tumults, and in all cases where laws are disabled to speak or act. *Ne respublica aliquid detrimenti patiatur*, 'that the public should by all means be preserved,' is the greatest necessity they can have, and that is the great end of power;

[a] [Pol., lib. iii. cap. 14. tom. ii. p. 1285.]

[b] [W. Schickard. de jur. reg., cap. 19, ex libro *Minhagim*, cap. ult., apud Ugolin. thes. antiq. sacr., tom. xxiv. col. 755. Buxtorf (synag. Jud., cap. 49.) and Geier (de luct. Hebr., cap. v. § 12.) describe the rite as generally practised, and not in the single instance of the royal dead.]

and either the commonwealth is like a helpless orphan, exposed to chance and violence, and left without guards, or else she hath so much power as to use all means for her safety. If she have not a right to do all that she naturally can, and is naturally necessary, she is deficient in the great end of government; and therefore it must be certain she hath absolute power: now wherever this is subjected, there it is habitually, there it is always. I do not say it is always there where it is sometimes actually administered; but there it is habitually from whence it is concredited actually, and put into delegation and ministry: and this is the power that can do all things of government; and because it is supreme, and it is so always, it cannot be in any time less in judgment, because it is greater in power; that is, it is accountable to no man whatsoever it does.

Qui rex est, regem, Maxime, non habeat[c].

§ 3. This supreme power is commonly expressed by *potestas regia*, or 'kingly power,' or power imperial; though when the emperor was lord of the world, to be a king in most places went much less: but because most kings have been and are supreme in their own dominions, (and they always are so, and are so acknowledged, to whom their subjects are bound by the oaths of allegiance and supremacy,) by this word we commonly mean the supremacy or the majesty. So Suetonius[d] speaking of Caligula, says he was very near *speciem principatus in regnum convertere*, 'to change the government into a kingdom,' that is, to make it absolute and supreme: and this distinction Piso[e] used concerning Germanicus, *principis Romanorum, non Parthorum regis esse filium*, meaning that the Parthian kings were absolute, but the Roman princes ruled with the senate: and Cæsar tells that Vercingetorix was put to death because he being but the prince of the Gauls affected the kingdom. Βασιλεὺς αὐτοτελὴς ὄντως καὶ αὐτοκράτωρ, καὶ ἑαυτοῦ καὶ τῶν νόμων, πάντα τε οἷα βούλοιτο ποιῇ, καὶ πάνθ' ὅσα ἂν μὴ βούλοιτο μὴ πράττῃ· so Dion[f] described the power of a king, for that which they understood to be the supreme power.

Σύ τοι πόλις, σὺ δὲ τὸ δήμιον,
πρύτανις ἄκριτος ὤν,
κρατύνεις βωμὸν ἑστίαν χθονὸς
μονοψήφοισι νεύμασι σέθεν·

So the people in Æschylus[g] spake to their king, 'thou art our city, our commonwealth, above all judicatories, thy throne is sacred and immured as an altar, and by thy suffrage, by thy own will, thou governest all things.' This is the *jus regium*, this the supreme power can do, it can be no less than this in its own nature and appointment. So the power is described by Theophilus, Πᾶσαν βασιλεῖ

[c] [Mart., lib. ii. epigr. 18.]
[d] [Calig., cap. 22.]
[e] [Tacit., annal., lib. ii. cap. 57.]
[f] Lib. liii. [cap. 28.]
[g] Supplic. [370.]

δέδωκε κατὰ τοῦ δήμου ἐξουσίαν, 'he hath given to the king all power over the people.' So it is described by Livy[h], *Reges non liberi solum impedimentis omnibus, sed domini rerum temporumque, trahunt consiliis cuncta, non sequuntur,* 'kings are not only free from all lets and incumbrances, but are lords of times and things, they by their counsels draw all things after them, but follow not.' The Greeks call this supremacy, ἐπιτάττειν ἀνυπεύθυνον ὄντα, 'a power to rule without danger of being called to account by men.' S. Ambrose[i] calls it, *Non ullis ad pœnam vocari legibus, tutos imperii potestate,* 'a power that is safe in its own circles, and can by no laws be called to punishment:' τὴν πρώτην ἀρχὴν, that's Galen's word, 'it is the chief or prime principality.'

——— Toto liber in orbe
Solus Cæsar erit[k] ———

'The king alone is free;' all others are under compulsories and judges. But S. Peter's phrase is better than all of them, ὑποτάσσετε τῷ βασιλεῖ[l] ὡς ὑπερέχοντι. The king is the most eminent, the defender of all, and above all; ὑπερέχει, ὑπερμαχεῖ, ὑπερασπίζει, saith Suidas. The king or the supreme hath the power of defence, the power of the sword, and that commands all the rest: for ὑπερέχων ὑπερνικῶν, it signifies to be more than conqueror;—so the grammarians.

§ 4. But in order to conscience, kings and princes, I mean all supreme powers, must distinguish *potestatem imperii ab officio imperantis;* that is to be considered by subjects, and this by princes. Supreme princes always have an absolute power, but they may not always use it. He that hath a sword by him is not always tied to use it, and he must cut his meat with a knife. Κατὰ τάξιν τινὰ βασιλεία, ἡ δὲ ἀόριστος τύραννις, says Aristotle[m]; 'it is a kingdom when it is by rule and measure, but if it be unlimited it is a tyranny:' that is, when affairs are capable of a law and order, the supreme power must so conduct them, he must go in that path where they stand; but if they grow wild and irregular, he must go out of his way to fetch them in again.

§ 5. But then it is also to be considered that the absolute power of the prince is but an absolute power of government, not of possession; it is a power of doing right, but not a power of doing wrong: and at the worst, is but a power of doing private violences for the security of the public. This power is excellently expressed in the tables of the royal law written to Vespasian; *Uti quæcunque ex usu reipublicæ majestate divinarum, humanarum, publicarum, privatarumque rerum esse censebit, ei agere, facere, jus potestasque sit, uti Augusto fuit:* 'Augustus Cæsar was the most absolute prince

[h] Decad. i. lib. 9. [cap. 18.]
[i] [Apol. David., cap. x. tom. i. col. 692 F.]
[k] [Lucan, lib. ii. 280.]
[l] [ὑποτάγητε.. βασιλεῖ,—1 Pet. ii. 13.]
[m] [Rhet., lib. i. cap. 8.]

that ever ruled the Roman people; to him was granted,' saith Alciat[n], 'to be free from laws, and all the necessity of laws, to be obnoxious to no law written, and to have all the power of kings: and yet all that power was but to do every thing which he should esteem to be useful to the public, and according to the majesty of religion and all human rights, public and private.' And therefore he is *princeps regni*, but not *dominus*, 'a prince,' not 'a lord;' and the distinction is very material. For to be lord, signifies more than the supreme power of government. *Qui primi fuerunt Romæ principes, etsi poterant videri revera domini, vitabant tamen valde domini nomen, veluti contumeliam ac maledictum; non vitaturi si esset nomen solius honoris, aut moderatæ potestatis,* saith Suetonius[o]: 'the first princes of Rome esteemed it a disgrace to be called lords, because it was not a name of mere honour, or of a moderate power; for if it had, they would not have declined it:' but it means an absolute power to dispose of all lives and all possessions; which is beyond the power of the king or prince. He that is a king rules over a free people, but a lord rules over slaves. Tacitus[p], according to the popular humour of the Romans, supposed the power of a king to be too great a violation of liberty; but domination or lording it was intolerable. *Principatus et libertas res sunt dissociabiles; magis tamen sunt dissociabiles libertas et dominatio;* for 'to be the absolute lord cannot consist either with freedom or propriety:' and therefore Ovid[q] prefers Augustus before Romulus in this very instance, for speaking to Romulus of Augustus, he says,

Tu domini nomen, principis ille tenet.

Augustus is a prince, a gentle governor; Romulus was a lord, that is, something that no man loves, but every man serves and fears. This power is well expressed by S. Peter's word of κατακυριεύειν, a power not ministering to good, nor conducted by moderation.

——— Maximum hoc regni bonum rati,
Quod facta domini cogitur populus sui
Tam ferre quam laudare[r].———

When the people must suffer the will of their imperious lord, and must commend it, that is, be a slave in their persons and their labours, their possessions and their understandings: that is more than a prince or a gentle lord will do; for then the word is good, when the man is gentle, and the power is moderate. But that which I intend to say is this, that the supreme power of government is at no hand a supreme power, or an arbitrary disposer of life and fortunes; but according to law, or according to extreme necessity, which

[n] De magistrat. [opp. tom. iv. col. 498. ed. fol. Franc. 1617.]
[o] August. 53. [This and the following reference are only approximate.]
[p] Tacit. in Agric. [vid. cap. 3.]
[q] [Fast., lib. ii. 142.]
[r] [Sen. Thyest., 205.]

is the greatest law of all. In the sense of honour and of moderate power the king is a lord, but not in this sense of law. *Qui pleno jure dominus est, alienandi, dissipandi, disperdendi jus habet,* saith the law, *l. 7. C. de relig. l.* '*Sed et si lege,*' 25. § '*consuluit,*' *ff. de hæred. petit*[t]. By a lord is meant he that hath power to dispose of the goods of the vassals: and this a king or prince hath not. This is not the supreme power of government. A king is not the lord of his kingdom, of the territories of his subjects, *quia dominium in solidum non possit esse duorum,* saith Cujacius, 'there cannot be two absolute lords of the same land.' The right owner is the lord, not the right king. *Aliter reipublicæ sunt agri, aliter privatorum. Numquid dubium est quin servus cum peculio domini sit? Dat tamen domino suo munus. Non enim ideo nihil habet servus, quia nihil est habiturus, si dominus illum habere noluerit,* said one; 'the servant is within his lord's peculiar, but yet he can make a present to his lord: if his lord please, the servant shall have nothing; but yet it follows not that therefore he is possessed of nothing.' Now if this be true in slaves, much more, infinitely more, is it in free subjects; for otherwise are my lands my own, otherwise they are the prince's. *Jure civili omnia regis sunt,* saith Seneca[u]; *et tamen illa quorum ad regem pertinet universa possessio in singulos dominos descripta sunt,* 'by the law all things are the king's; but even those things are divided into peculiars, and have private lords.' It is all the prince's lands, and he receives the tribute, and he receives the service and the duty of them all; but the lords receive the rents. The Athenians and the Thebans fight concerning the bounds of their territory; and at the same time Polyænus and Thysias are at law about dividing their shepherd's walks in the same place. *Sub optimo rege, omnia rex imperio possidet, singuli dominio*[x], 'the king governs all, but the subjects possess all their own:' for so Livy might buy his own books of Dorus; they were Dorus his books and Livy's too: and when a lord receives his rent, the tenant may call the lands his own. Some things are mine by possession, some by use, some by title, some by incumbency; one is the author, and another is the buyer; one is an artificer, and another the merchant of the same thing; and the king hath the power, but his subjects have the propriety. *Cæsar omnia habet; fiscus ejus privata tantum ac sua: et universa in imperio ejus sunt, in patrimonio propria*[y]. That's the sum of this enquiry: 'the king hath all, and yet he hath something of his own in his peculiar,' and so have the subjects.

§ 6. The effect of this consideration is this, that the supreme power must defend every man's right, but must usurp no man's. He may use every man's peculiar for the public necessity, and in just and

[t] [Digest., lib. v. tit. 3. l. 25. § 11.]
[u] Lib. vii. de benef., cap. 4. [tom. i. p. 836.]
[x] Ibid., cap. 5. [p. 838.]
[y] Cap. vi. [p. 839.]

necessary government, but no otherwise; and what is out of any peculiar expended for the public defence, must out of the general right be repaid for the private amends. *Verum etsi nostra tempore necessitatis patriæ conferre debeamus, tamen jure naturæ congruit ut communis salus, communis utilitas, commune periculum, non unius duntaxat aut alterius, sed communibus impensis, jacturis, periculisque comparetur,* said Cicero[z]. A king is to govern all things, but to possess nothing but what is his own. Only concerning the necessity, if the question be, who shall be judge; it is certain that it ought to be so notorious that every man might judge; but he who is to provide against it is certainly the only competent person, and hath the authority. For he that is to stand against the sudden need ought to espy it. But if ever there be a dispute who shall judge of the necessity, it is certain the necessity is not extreme; and if it be not, yet it ought to be provided against when it is intolerable. Ahab had no right to take Naboth's vineyard; but if the Syrian army had invaded Israel, Ahab might have put a garrison in it, or destroyed the vines to have saved or served his army.

§ 7. And to this sense Lyra expounds the *jus regium,* 'the right of the king,' described by Samuel[a] to the people of Israel: for (saith he) there is a double right; the one in the days of necessity, and then all things are in his power so far as can truly serve that public necessity: but when that necessity is over, that right is useless, and is intolerable. And by this means the different opinions of the Jewish doctors may be reconciled. Rabbi Jose says that whatsoever is here set down it was lawful for the king to do. R. Juda says that this description was only to affright the people from persisting in their desire of a king. Both might say true; for that it was not lawful in ordinary government to take the peculiar of the subject, appears clearly in the case of Naboth. But that in extraordinary it is just needs no other argument but because it is necessary: and it appears also in the case of David and Nabal, upon whom David would have done violence, because he sent him not provisions for his army out of his own peculiar. But it is considerable that this royal power described by Samuel is no more than what is necessary to be habitually inherent in all supreme powers; this is *potestas imperantis;* he may *licite facere in tempore necessitatis, legitimè semper,* 'in time of need he may use it lawfully, but always legitimately,' that is, if he does, he only abuses his power, but it is his own power which he abuses: for when Moses[b] described the usage and manner of a king, he did it by the measures of peace and piety, and the laws of natural justice and equity, with the superfetation of some positive constitutions which God commanded for that king, as part of the judicial law. But when Samuel described the manner of their king, he described the whole power in ordinary and extraordinary: the

[z] 4. ad Herennium. [?] [a] [1 Sam. ii. 11—8.] [b] [Deut. xvii. 16—20.]

power, I say, but not the office: Moses described the office, but not the power.

§ 8. I add to this another consideration, that whether all that the Hebrew king did or might do was warranted by God or no, it matters not to us. For if it be no more than the necessary requisites of supreme power, to be used in time only of necessity, we need not fear that this precedent can injure the rights of any people: but if there were in it something more than was good, it was certainly a peculiar of that people, who desired a king to rule over them as the neighbour nations had; right or wrong they stood not upon that, and therefore Samuel described to them what that was which they required. It was no warranty to the king to do so, but to the people to suffer it: but if it was ill, it was their own desire; for so the neighbour kings did govern, using too much of their power, and too little of their duty and office. And therefore God was angry with His people, not that they desired a king; for God gave them three things in charge, say the rabbins, which they should do when they came into the land of promise, that they should blot out the name of Amalek, that they should choose a king, that they should build a temple. Therefore the choosing of a king was not it that offended God, but that they should desire that a king should reign over them in the manner as the gentiles had. 'For they thought,' saith Josephus[c], *οὐδὲν ἄτοπον εἶναι τῶν πλησιοχώρων βασιλευομένων τὴν αὐτὴν ἔχειν αὐτοὺς πολιτείαν*, 'that all would be well if they had the same form of government as the nations had.' Now their neighbour nations were governed the most tyrannically, and the people served the most slavishly in the whole world.

—— dociles servire Sabæos,

'The Sabeans,' says Claudian[d], 'were apt to serve:' *dociles herilem ferre manum Syros et Parthos, et omnes qui aut ad orientem aut ad meridiem sunt barbaros*, said Julian[e]. All the Syrians and Parthians, and all the nations of the east and south, were used to slavery; *contentos sub regibus vivere dominos imitantibus*, their kings were absolute lords of possessions as well as of tribute and government; and the people were pleased to have it so: and the Israelites would follow their example. *Ecce in hoc errarunt*, says a Jewish doctor, *quòd Israelitarum conditio non est ut judicet eos rex aliquis pro sua voluntate, ut imperatores gentilium, qui sanciunt populis suis leges, quascunque animis concipiunt:* 'their error was in desiring such a king as the gentiles had; for their condition would not suffer it that their king should make laws according to his own will and humour,' as did their neighbour kings, who were proud and barbarous, and counted easiness of access a lessening of majesty, and would be bound by no measures but their own will: and therefore said God to Samuel[f],

[c] [Antiq. Jud., lib. vi. cap. 5. p. 231.]
[d] [lib. viii. 306.]
[e] Contr. Christian. [apud Cyrill. Alex. contr. Julian., lib. vi. tom. vi. p. 138 B.]
[f] [1 Sam. viii. 7.]

"They have not rejected thee, but Me;" that is, they would have a king, not such as I have commanded in my law, but such as they see among their neighbours, who make laws themselves without me. And therefore although God commanded Samuel to hearken to them, and make them a king; yet by terrors, like those on mount Sinai, he first made them confess their fault, and therefore to submit to a king of God's choosing, who should reign by God's law.

§ 9. So that it is to no purpose that this place hath been so tortured by interpreters, and pulled in pieces by disputation; while they contend on one side that this was a description of the king's power, on the other, that it was a prediction of matter of fact: for it was neither one nor the other alone, but a description of the manner of the heathen kings; and a representment of what it was which they asked, and what was like to be the effect of that power which they desired God would set over them: but the question of the extent and liberties of the supreme power is no way concerned in it. For it matters not what the eastern and southern kings did; for they did that in ordinary which is not to be done but in cases extraordinary; they did that for pleasure which was not to be done but for necessity. But as to the thing itself, nothing can be more certain, but that α) In all republics, somewhere or other, there is a supreme power. β) That this power can do all things of government; so that nothing is so great, but if it be necessary, it is just, and can be done; for if there were any time and any case in which evil may happen, and no provisions may be made for it, in that case and at that time it is an anarchy, there is no government at all. γ) That this supreme power being a power of government, must also be a conservator and great minister of justice; and therefore must suppose every man's right to be distinct, and separate, and firm: and by consequence that he hath nothing to do with men's propriety, but to defend them in peace, and use them in war so as is necessary, that is, so as is unavoidable; according to that saying of Maimonides, *Potestatem habet rex ordinandi mundum juxta id quod præsens hora postulat.* There are some sudden accidents against which there are no regular provisions in laws; but to provide for them at the instant by extra-regular means is within the power of the supreme. But in all this whole question the saying of Baldus[g] is the best measure of the consciences of princes: *Clausula de plenitudine potestatis semper intelligitur de potestate bona et laudabili.* The plenitude of power of all things in the world ought the least to be feared, because it never is to be used but for the greatest good.

Upon the occasion of this discourse the lawyers sometimes dispute,

§ 10. Whether it be lawful, and in the power of the supreme

[g] 1 Consil. 245. [vid. consil. 333. fol. 72 b. ed. fol. Lugd. 1559.]

prince or magistrate, to aliene or lessen his princely rights, or to give away any parts of his kingdom.

§ 11. But to this the answer is easy. For

1) Whatsoever is their right by just conquest, or is ἐν μέρει κτήσεως ἰδίας, in their private possession, they may aliene as any private person may his lands. Thus Solomon gave the חָבוֹל[h] twenty cities (which his father-in-law the king of Egypt had conquered and given him with his wife in dowry, and which himself had won) to Hiram. Alexander gave all his kingdoms to his princes that served him in his wars. Attalus gave Asia to the people of Rome; Nicomedes gave Bithynia: the father of Mithridates had Paphlagonia by gift: and in England it was said that Edward the confessor gave England by will to the bastard of Normandy: and divers of our kings did in their wills at least recommend a successor; Edward the sixth did, but it came to nothing. But when the donor or the donee respectively can make it good, then it holds in law, and not otherwise; for questions of this nature used to be determined by the sword, and not by discourses.

§ 12. 2) But yet this is certain, that where the princes are trustees of the people, and elective, or where the right of succession is in a family by law or immemorial time, no prince can prejudice his heir, or the people that trusted him. Nothing is here to be done without consent, not only because the alienation cannot be verified against consent (in which case Charles the sixth of France desired his will might be confirmed by the nobles; and the king of Macedonia went up and down to all the cities to recommend to them Antigonus whom he desired to make a king:) but because in these cases, though kings have the supreme power, yet they have it not *pleno jure*, by a fulness of dominion. It may be as Aristotle[i] calls it, παμβασιλεία, παντελὴς, αὐτοκράτης καὶ ἀνυπεύθυνος βασιλεία, 'a full, supreme, absolute and entire principality,' yet by not being in full and entire private possession it is by all rights to be administered, but without wrong cannot be aliened. Hottoman[j] will by no means admit that in any case a kingdom can be aliened: because it is the case of persons as well as of things; and they cannot be disposed of like slaves or beasts. But he considered not that subjection to princes can best stand with personal liberty; and this cannot well be secured without that; for where there is no civil government, every man that is stronger can make me a slave, but by the power of a prince I am defended in my liberty: and Hottoman's objection must needs be invalid, unless there be no liberty but where there is no government.

[h] [1 Kings ix. 13.]

[i] [Polit., lib. iii. capp. 15, 6: cf. Grot. de jur. bell.; lib. i. cap. 3. § 20.]

[j] Illustr. quæst. i. [tom. i. col. 848. opp. fol. Lugd. 1599.]

RULE II.

THE SUPREME POWER IS SUPERIOR TO THE CIVIL LAWS, BUT NOT WHOLLY FREE FROM THEM.

§ 1. THIS rule hath been thrust into great difficulty by the interests and mistakes of princes and subjects respectively. For it hath been disputed whether princes be free or no from the laws of their kingdom; and things of this nature when they once are questioned, are held more pertinaciously, and desired more greedily, and possessed suspiciously, and conducted with jealousy, and looked upon with envy or indignation. For the prince, if it be but disputable, will yet conclude for his own interest, and it is argument enough for him that it is so, because it is not certain that it is not so. And the subjects will upon the same account suppose the prince bound to his laws, because they know nothing to the contrary; and therefore they presume for the authority of the laws as the prince does for the immunity of his person. But then because it is questioned, the prince lest he lose it quite will hold the faster, and the people will snatch at it more impotently lest they be slaves for ever. And therefore disputations in this case are not prudent or safe, but precepts, and sermons, and great examples, and the sayings of wise men, and positive affirmations in those particulars that be manifest.

§ 2. *Princeps legibus solutus est*, said Justinian[k], 'the prince is not tied to laws:' for it seems impossible that he that hath power over the law, he that gave it being and can give it a grave, should be less than that which hath no greatness but what it borrows from him. Indeed if the prince had devested himself of his power when he made the law, he had been subject to it, but then he could have no power to abrogate it; which because it is inseparable from the legislative power, it follows that the life of the law is in continual dependence from, and therefore in minority and under him; and therefore the lawyers have a proverbial verse,

Non est rex legi, sed lex obnoxia regi.

For a law without compulsory power is nothing but good counsel at the best; and the supreme power cannot be compelled: for he will not compel himself, he cannot; he may be willing, but he can never force himself; and to the supreme no man is superior, and therefore none else can compel him. Therefore the divines used to say, and so do the lawyers too, that kings are subject to the directive power of the laws. The distinction I acknowledge, but believe it here to be to no purpose: for laws have no such power, and a directive power is no power; for if it can only direct it is not a law, for a law obliges

[k] Instit. d. tit. 2. [lege Digest., lib. i. tit. 3. l. 31.]

and does not only direct: and as for the mere matter of counsel, the prince need not be at the charge of a law for that; his counsellors, his bishops, his lawyers, his friends can do that without a law. The same thing is usually said concerning just men. *Justis lex non est posita,* saith the apostle[l], 'the law is not made for the righteous,' but for the wicked: that is, the compulsory of laws is not at all designed for them that obey without compulsion. Not but that the just are under the power of laws, and the laws were made to command them the particulars and the instances of obedience; and if they prevaricate they shall feel it. But they are so willing to obey, and so love government and the virtues commanded by the laws, that the laws are of no use to good and just men, but to direct them to what is required of them: and so they are under that which is improperly called the directive power of laws; but princes are not so. The supreme power may if he will obey; so may the just man: but this man must obey or he shall be punished, but not so the prince. The laws of themselves may direct the prince; but it is because he will have it so: but they direct the just, because they have authority to command and to punish, only that the just will not let it come so far. It is but a shadow of liberty to say I am not under the compulsion, but the direction of laws: for such persons if they will not be directed shall be compelled, and it is better to be willing than unwilling; for call it what you will, you are commanded to do it, and you must obey. Now this being the case of the just subject, and not the case of the supreme power, whether just or unjust, it is clear that the prince or supreme power is not subject to any power of the laws; the law is no commandment to the prince, and whatsoever is nothing but counsel is no law.

§ 3. And yet on the other side we find good princes saying otherwise; and they who are apt enough to advance their own power, yet confessing their power to be less than the law, that is, that themselves are bound to keep it: so said the emperor[m]; *C. de legib. et constit. l.* 4.—*Digna vox est majestatis regnantis, legibus alligatum se principem profiteri,* 'it is a voice worthy of the majesty of a prince, to profess himself tied to his laws.' *Patere legem quam tu ipse tuleris,* said the wise man[n]; 'suffer the law which thou thyself hast made:' the same with that of Pittacus[o],

Pareto legi quisque legem sanxeris.

And the equity of this, besides that it is apparent, is also given in the law, *l.* 1. *ff. de pactis*[p],—*Nihil tam humanæ fidei consentaneum est, quam ea quæ placuerunt servari.* If they have pleased the prince in the sanction, let them also please him in the observation, for that's agreeable to the faith and ingenuity of worthy persons.

[l] [1 Tim. i. 9.]
[m] [Theodos. et Valent. in cod. Justin., lib. i. tit. 14. l. 4.]
[n] [Dionys. Cato, sent. brev. moral., 53.]
[o] [Apud Auson., epigr. 310. 5.]
[p] Digest., lib. ii. tit. 14. l. 1.]

§ 4. These things are but seemingly opposed, for both parts are true, and are to be reconciled by the following measures.

§ 5. 1) The supreme power is not under the fear of the laws, but is to love the virtue and order that is there commanded. For there is a necessity introduced by public honesty as well as by fear. And therefore the Greek lawyers in their commentaries upon that of the Institutions, that the prince is free from laws, expound it to be meant of penal laws; that is, they cannot be punished for prevaricating, or for not keeping them: and Decianus said the same thing, *Non quia iniqua liceant, sed quod non timore pœnæ, sed amore justitiæ.* It is no more lawful for princes to do unjust things than for their subjects; but they are invited to do worthy things, 'not because they are to fear the punishment of laws, but because they must love justice;' and there is that necessity for them to do so, that there is of being great and honoured. The laws of honesty, of fame and reputation, which amongst all good men are the guards of virtue, must endear it also to kings: so Claudian[q] to Theodosius,

> Tu licet extremos late dominere per Indos,
> Te Medus, te mollis Arabs, te Seres adorent;
> Si metuis, si prava cupis, si duceris ira,
> Servitii patiere jugum, tolerabis iniquas
> Interius leges: tunc omnia jure tenebis,
> Cum poteris rex esse tui: proclivior usus
> In pejora datur, suadetque licentia luxum,
> Illecebrisque effræna favet: tunc vivere caste
> Asperius, cum prompta Venus; tunc durius iræ
> Consulimus, cum pœna patet: sed comprime mentem,
> Nec tibi quod liceat, sed quod fecisse decebit,
> Occurrat, mentemque domet respectus honesti

A king is not to consider the greatness of his power, but of his duty; and not reckon upon his impunity, but his reputation[r]; and because he does not fear the public rods and axes, let him respect public honesty: so Accursius affirms, '*principem, etsi legibus solutus sit, honestatis tamen necessitate omnino teneri oportere:* and this is the sentence of Decius and most lawyers. But *Honestas non videtur inferre necessitatem* say the lawyers: 'this does not make it simply necessary;' but it persuades vehemently, and upon princes whose honour is both conscience and interest too, it differs but little from it. For it makes that they ought to do what is fit. But in kings it is true what Muscornus Cyprius[s] says, *Verbum illud Debet non coactionem, sed rationalem quandam persuasionem denotare videtur.* It is their duty, and they ought to do it; and that signifies every thing but compulsion. However, a prince is only free from one compulsory which is upon his subjects, but is under many which touch not them[t].

[q] [lib. viii. 297.]

[r] Vestri consilii, vestræ prudentiæ est spectare quid deceat vos, non quantum liceat.—Cic. pro Rabirio. [Post., cap. 5.]

[s] Hieron. Muscornus, tract. de Jurisdict. et Imp. [§ 9. in tractt. univ. jur., tom. iii. part. 2. fol. 16 b.]

[t] Principes qui superiorem non habent, plus puniuntur a Deo, et itaque caveant sibi ne peccent.—Castr. 11. C. de jud. [Vid. Paul. de Castro, super Cod. lib. iii. tit. 1. de judiciis, cap. 'Properandum,' § 'Sive autem alterutra,' n. 3.—fol. 120, ed. fol. Lugd. 1527.]

God enjoins him a greater duty, and exacts it with greater severity, and will punish their delinquencies more sharply. *Potentes potenter*, saith the Wisdom of Solomon[u], 'mighty men shall be mightily tormented;' and 'Tophet is prepared for the king[x].' Kings have a greater need in their affairs than the small fortunes of their subjects, and therefore have need of a greater piety to secure so great a providence. They have more to lose, and therefore need a bigger caution to secure it; they have more at stake to endear obedience; and since a king is but one person, and is strong only by the obedience of his subjects, and that obedience is secured only by love, and that love can no way be obtained but by beneficence and justice; if he breaks these securities, he may have cause to consider that of Tacitus[y], *Princeps unus est civium et senatus consensui impar*, 'that one man against a multitude is nothing:' and that the senate and the people are stronger, and need not fear him alone, but he alone may have cause to fear all them together[z]; and that the sins of a prince are often punished by the sins of the people. He can consider that he is to govern a multitude whom nothing can unite but an almighty power; that they are as contingent in their love and hatred as chance itself; that no fortune in a king is moderate, that when it declines it oftentimes runs to extremity; that he seldom hears truth, never meets with a bold and a wise reprover; that he hath many flatterers, and but few friends; that he hath great powers of doing evil, and temptations and opportunities always ready; that his very being superior to laws leaves his spirit infinitely unguarded and spoiled of one of the greatest securities of virtue; that impunity is a state of danger; that when virtue is left only under a counsel and cold recommendation, and is not made necessary by laws, he had need have a great and a mighty virtue to make it necessary by love and choice; and that such perfect virtues are but rarely obtained, and after a long practice; that fear is the beginning of wisdom; and therefore princes are very much to seek in this particular, because they have nothing to begin with; and to choose virtue for love is not usual with beginners, but is the consummation of the most perfect; so that we may well pray, 'God help poor kings,' who if they do virtuously must needs be infinitely dear to God, because it is so extremely difficult to be so, and nothing can make them so but two conjugations of miracles; the excellencies of the Spirit of God, and the spirit of a king. So that it is no privilege to kings that they are above the power of their laws; it is their objection, and the evil of their state. Only it is necessary to others that these should dwell in danger: and as for their obedience to laws, it is not bound upon them by the same cord

[u] [Wisd. vi. 6.] [x] [Isai. xxx. 33.] [y] [Annal., lib. xii. cap. 5.]

[z] Vindicta certe maxima in nobis sita est.
Cogunt timere? odisse rursum possumus:
Justa odia superant omne vindictæ genus.
Meursi. [Iamb. moral., lib. iii. 45, 'Tyranni ultio.' p. 83. 8vo. Lugd. Bat. 1602.]

that ties the subject, but by another; it is not necessary for the same reasons, but it is by a greater necessity.

§ 6. 2) But then these supreme compulsories being wholly conducted by the hand and providence of God, do plainly tell us that the supreme power is obliged to all the laws of God, to the laws of nature and christianity. A king hath no power to govern but according to God's laws. For if he does, though he have no compulsory below, yet above there are enough, and to God's laws the greatest power on earth is entirely subordinate. Ὁ *νόμος πάντων βασιλεὺς θνητῶν τε καὶ ἀθανάτων, ὥς φησι Πίνδαρος*, 'the law is the supreme king of all,' said Pindar[a]. The same is also said by Chrysippus, by Aristotle, and divers others: and Plato[b] affirms that destruction is imminent upon that city where the magistrate governs the law, and not the law the magistrate: and again, Ἄνομος *μοναρχία χαλεπὴ καὶ βαρυτάτη ξυνοικῆσαι*, 'the prince that rules not by laws is nothing but a grievance to his subjects.' But that these great persons mean the laws of God and nature is explicitly plain in Plutarch[c], who having affirmed that the law must rule the prince, adds by way of explanation, that it be that law, *οὐκ ἐν βιβλίοις ἔξω γεγραμμένος, οὐδέ τισι ξύλοις, ἀλλὰ ἔμψυχος ὢν ἑαυτῷ λόγος, αἰεὶ συνοικῶν καὶ παραφυλάττων, καὶ μηδέποτε τὴν ψυχὴν ἐῶν ἔρημον ἡγεμονίας*, 'not which is written in books or tables, but the law of reason that always dwells within; that law that always is his guard, and never suffers the soul to be without a guide,' that is the law that is superior to princes. Some little instances of particulars of this law were decreed by Servius Tullius king of the Romans; of which Tacitus[d] says, *Præcipuus Servius Tullius sanctor legum fuit, queis etiam reges obtemperarent;* 'he made laws of that nature that even kings themselves should obey them.' For as

Regum timendorum in proprios greges[e],

So it is as true,

Reges in ipsos imperium est Jovis;

As the people are subjects of the prince, so is the prince of God; they must obey their king, and their king must obey God: concerning whose law it was said to Domitian by Apollonius Tyanæus[f], *Hæc mihi dicta sint de legibus, quas si tibi imperare non putaveris, ipse non imperabis*, 'if thou dost not think these laws ought to rule over thee, thou shalt not rule at all.'

§ 7. Upon this account a prince may not command his subjects to fight in an unjust cause, according to that saying of S. Hierome[g], *Cum dominus carnis a Domino spiritus adversum imperat, non est*

[a] [vid. Platon. de leg., lib. iv. cap. 6. tom. viii. p. 110, et lib. iii. cap. 10. p. 45.]
[b] Dial. iv. de leg. [cap. 6. p. 107.]
[c] Lib. de regno. [al. ad princip. inerud., tom. ix. p. 120.]
[d] [Annal., lib. iii. cap. 26.]
[e] [Horat., lib. iii. od. 1. 5.]
[f] Apud Philostratum. [lib. viii. cap. 3. p. 382 A.]
[g] In Ephes. vi. [tom. iv. part. 1. col. 397.]

obediendum; 'we must not obey the rulers of this world, the lords of our flesh, when they command any thing contrary to the laws of the God and Lord of all spirits.' The commands of princes must be, as Tertullian[h] says, *intra limites disciplinæ,* 'within the bounds of our religion;' and therefore the Athenians laughed at Stratocles[i] for desiring them to make a law that whatsoever pleased king Demetrius should be the measure of piety to the gods and of justice amongst men. God's law is the measure of the prince's power; not his will the measure of that: and therefore the Jews that were soldiers under Alexander[j] could by no tortures be compelled to assist in the building of the temple of Belus in Babylon; and the Thebæan legion under Julian the apostate[k] refused not to fight for their prince against the barbarians, and they refused not to die, but they refused to be executioners of the martyrs that died in the cause of christianity.

§ 8. But this is to be practised that the prince's just laws be not neglected upon the arrest of every fancy or foolish opinion. If it be certain that it is against the law of God, then we are safe in our disobedience. *Idcirco Romanas leges contemnimus, ut jussa divina servemus,* said Sylvanus the martyr[l], 'because we are sure these Roman laws are against the commandments of God, we easily despise them.' But if we be not sure, but are in doubt whether the laws be just or no, we are to presume for the laws, and against our own fears. For nothing is at all of advantage due to the laws, if we prefer before them any opinion of our own which we confess uncertain; and although we are not to do any thing of which we doubt, yet in a doubt we are to obey laws, because there is a doubt on both sides: and as we fear the thing is unjust, so we have reason to fear the evil of disobedience, for we are sure that is evil; and therefore we are to change the speculative doubt into an active judgment, and a practical resolution, and of two doubts take the surer part, and that is to obey; because in such cases the evil, if there be any, is to be imputed to him that commands, not to him that obeys, who is not the judge of his prince, but his servant. *Servus herilis imperii non censor est, sed minister,* said Seneca[m]. They that are under authority are to obey, not to dispute. But of this I have given an account already in the first book, chap. 5, rule 6 [n].

§ 9. 3) But then concerning the civil laws of his country we are to distinguish; for some concern the people only, and some concern the prince only, and some are common to both. Those that concern the people are such as require tribute, and labours, and manners of

[h] [De idol., cap. 15. p. 95 A.]

[i] [Plutarch. vit. Demetr., cap. 24. tom. v. p. 42.]

[j] [Hecat. apud Joseph. contr. Apion., lib. i. § 22. p. 1348.]

[k] [Ambros. apud Gratian. decret., part. 2. caus. 11. quæst. 3. cap. 94. col. 1037; August. in psalm. cxxiv. tom. iv. col. 1416 D. Two separate histories are here confused. That of the Theban legion properly belongs to the time of Diocletian: see p. 190 below.]

[l] In Martyrol. Rom. [apud Grotium, lib. ii. cap. 26. § 3.]

[m] [lib. iii. excerpt. controv. 9. tom. iii. p. 439.]

[n] [Vol. ix. p. 232.]

trade, their habits and dwelling. In these and all such the people are obliged and not the prince: for the duties are either relative, and concern their part only of the relation; or else by the nature of the things themselves do point out their duty, and in these things there is no question. For not the king but the people are to pay tribute, and the king's lands are free if they be in his own possession.

§ 10. 4) But there are some laws which concern the prince alone, as all acts of grace and ease to the people; all that he hath been pleased to promise, the forms and laws of government, and to whatsoever himself hath consented, by all those laws he is bound; because in such cases as these it is true what Pliny said to Trajan in his panegyric[o], *In nostris, simili religione, ipse te legibus subjecisti, Cæsar, quas nemo principi scripsit; sed tu nihil amplius vis tibi licere quam nobis.* The prince had not a law imposed upon him, but he became a law unto himself; and when he hath bound himself, there is the same necessity upon him as upon his subjects.

§ 11. 5) Other laws yet do concern both prince and people; such as are all contracts and bargains. *Licet serviant ædes meæ, ei tamen cum quo agitur non serviunt, quantum enim ad eum pertinet, liberas ædes habeo, l.* 4. *Si serv. vind.*[p]: 'although my house is bound to serve the public necessity, yet in respect of him that contracts with me my house is free.' So also it is in the acquisition of new rights, the repetition of the old, and generally in all those things that are established by the law of nature, or do concern him personally, and not in the capacity of a king. Thus saith the law, *In imperfecto testamento nec imperatorem hæreditatem vindicare posse sæpe constitutum est*[q], 'the prince cannot be heir if the testament of the dead man be illegal.' Sometimes and in some places, it may be, fewer witnesses will serve in the prince's case than in another man's, but then it is because fewer in his case are required by law; but still the law is his measure as well as of his subjects.

§ 12. 6) The great laws of the kingdom do oblige all princes, though they be supreme. Such were those which were called the laws of the Medes and Persians; whose princes, although they were the most absolute and supreme, yet they were inferior to those laws, as appears in the book of Daniel. These are by way of eminence called *leges regni*, 'the kingdom's laws.' Such are the Golden Bull of the empire, the law Salic and the Pragmatical Sanction in France, the Magna Charta and the Petition of Right in England, and in other countries the like, as who please may particularly for Spain see in Mariana[r]. This is confessed by all, and it relies upon natural justice, the prince having consented to it; it is either *sponsio principis*, or *conditio regnandi*, he was admitted either upon that condition or with it.

[o] [Cap. 65.]
[p] [Digest., lib. viii. tit. 5. l. 4. § 7.]
[q] L. 3. C. de testam. [lib. vi. tit. 23.]
L. 6. C. qui test. fac. poss. [tit. 22.]
[r] Lib. xx. [cap. 9.]

§ 13. 7) Whatsoever the prince hath sworn to, to all that he is obliged, not only as a single person but as a king; for though he be above the laws, yet he is not above himself, nor above his oath, because he is under God: and he cannot dispense with his oath or promise in those circumstances and cases in which he is bound. And therefore although the prince is above the laws, that is, in cases extraordinary and privileged cases, and the matter of penalties, yet he is so under all the laws of the kingdom to which he hath sworn, that although he cannot be punished by them, yet he sins if he breaks them. Not that the law does bind him, for it cannot bind without a compulsory, and against him the law hath no such power; but yet he is bound to the law, though not by it; the obligation comes not from the law but from other causes, from his promise, his oath, his contract, his religion, his reputation, his fear, his hopes, his interest, and especially from God himself. For it is carefully to be observed in this particular, that though a promise gives a man right to the thing which is promised, it does not always give him a right over the person. A king is like him that promises a thing under a curse; if he fails, the injured person is not to curse him, or to inflict the curse upon him, but that is to be permitted to God alone. And therefore if a king swears to his people to make no law without their consent, he is bound to perform his word; but if he does not, God, and not they, are to punish the perjury. The king's promise, or cession, or acts of grace do never lessen or part his power, but they tie his person. An act of parliament in England, if it be made with a clause of perpetuity, that if an act should be made to rescind it it should be void, that first act of itself is invalid. *Clausulæ deroganti si derogetur, valet ut posterius testamentum, ita posterior constitutio,* say the lawyers. Concerning which Cicero hath written an excellent epistle to Atticus, *lib. iii. epist. ad Attic. epist.* 24. It is as if a man should make a will to annul all future wills of his own; it shews indeed that he had then a mind to have that to be his standing will; but how if his mind change? Constantine made a law that widows and orphans should not be cited to the emperor's court for judgment, or compelled to come, though he himself should command them; but yet if he did command them that first rescript stood for nothing. Antiochus the third commanded the magistrates not to obey him if he commanded any thing against the laws; but if he should command any such thing, it were not safe for them to urge himself against himself. The Roman emperor[q] bade his officer use his sword against him if he broke the laws; but this gave him no power over his prince in case he had gone against the laws; it is nothing but a confident promise, and an obligation of his honour and his conscience, of which God alone is the superior and the guardian.

§ 14. The custom of supreme princes swearing to govern by laws

[q] [Trajan., apud Xiphilin., p. 248 D; Plin. paneg., cap. 67; Cassiod. var., lib. viii. epist. 13. Cf. p. 41 supra.]

was very ancient; we find an example of it amongst the Gothish kings in Cassiodore[r]; amongst the late Greek emperors in Zonaras and Cedrenus. Anastasius the emperor sware to observe the decrees of the council of Chalcedon; Adrian the emperor sware that he would never punish a senator but by the sentence of the senate; and Trajan having promised to rule with justice and clemency, consecrated his head and right hand to the anger of the gods if he broke his word: and Plutarch tells, that the kings of the Cossari sware to the Epirots that they would govern according to the laws. And indeed, abstracting from the oath and promise, kings are bound by natural justice and equity to do so: for they are not kings unless they govern; and they cannot expect obedience, unless they tell the measures by which they will be obeyed; and these measures cannot be any thing but laws, which are at first the will of the prince; and when they are published to the people, then they are laws, but not till they be established by rewards and punishments, which are the portion of the people good and bad. Now this is the natural way of all good government, there is no other; and to govern otherwise is as unnatural as to give children meat at their ears, and hold looking-glasses at their elbows that they may see their face. If kings be not bound to govern their people by their laws, why are they made? by what else can they be governed? By the will of the prince? The laws are so; only he hath declared his will, and made it certain and regular, and such as wise men can walk by, that the prince may not govern as fools govern, or as a lion does, by chance, and violence, and unreasonable passions. *Ea quæ placuerunt servanda*, saith the law, *l.* 1. *ff. de pactis*[s]. If this had not been the will of the prince, it had been no law; but being his will, let it be stood to: when the reason alters, let his will do so too, and the law be changed, that the measures of right and wrong, of obedience and disobedience, may be known.

§ 15. We have seen how kings are bound; the next enquiry is, how they are freed, and how they are superior to laws. Antonius Augustinus[t] says, that by the *lex regia*, or the *jus regium*, kings, that is, the supreme power, are only freed from some laws: and this he gathers from the words of the royal law written to Vespasian[u], *Uti quibus legibus . . ne Augustus teneretur, iis Vespasianus solutus esset: quæque ex quaque lege Augustum facere oportuit, ea omnia Vespasiano facere liceat:* 'where Augustus Cæsar was free, Vespasian should be free: but those things which Augustus ought to do, all those Vespasian might.' The word *liceat* in his case was modestly

[r] Cassiod. var., lib. x. [epistt. 16, 17.]
[s] [Digest., lib. ii. tit. 14. l. 1.]
[t] [De leg. et senat. consult., in voc. 'Regia,' p. 178. ed. 4to. Rom. 1583.]
[u] Authent. 'Si quis de eden.' [From a fragment of the lex regia (referred to above, p. 164) engraved on a brazen tablet still extant in the Lateran at Rome, and copied by Gruter, corp. inscript., p. 242, Anton. August., ubi supra, Ernesti, excurs. ii. in Tacit. hist., iv. 6.]

put in; not but that *oportuit* had been the better word to express his obligation, as well as the duty of Augustus: but it was therefore chosen to represent that to be expected from him, but could not be exacted; it was his duty, but no compulsion lay near him: but certain it was, that the power of the people being devolved upon him (for it had been a popular government) as the people were bound to the laws which themselves have made, so was the prince. The people were, for there was none else to keep them: but therefore so was the prince, for he had but the same power which the people formerly had when they were supreme. But then that they were tied but to some laws, and not to others, is very true: but so that he was tied to all those laws which were intended to oblige him directly, and indirectly to all the rest, that is, to govern the people by their measures only.

§ 16. But now if we enquire from what laws they were freed, and what is the right of a king or the supreme power more than of the people, I answer,

1) It consists in that which we in England call the king's prerogative; in the civil law the *lex regia*, or Vespasian's tables; by the Jews חק, the δικαίωμα βασιλέως, 'the statute or proper appointment of the king:' the particulars of which are either described in the respective laws of every people, or are in their customs, or else is a power of doing every thing that he please that is not against the laws and customs of his people, without giving a reason. *Cum lege antiqua, quæ regia nuncupatur, omne jus omnisque potestas populi Romani in imperatoriam translata sunt potestatem*[u], saith the law. Amongst the Romans that was the *jus regium*, that the prince could do all that ever the people could: now what that was, we find in Dionysius, by the concession of Romulus, *Populus magistratus creanto, leges sciscunto, bella decernunto*, 'the people might create magistrates, make laws, and decree peace and war.' That is the right of kings, or the supreme power. Guntherus[x] hath summed them up from the laws and customs of the empire, and some ancient Italian governments.

> Ac primum Ligures, super hoc a rege rogati,
> Vectigal prorsus, cudendæ jura monetæ,
> Cumque molendinis telonia, flumina, pontes,
> Id quoque quod fodrum[y] vulgari nomine dicunt,
> Et capitolitium certo sub tempore censum.
> Hæc Ligures sacro tribuerunt omnia fisco.
> Hæc et siqua pari fuerint obnoxia juri,
> Prælati, proceres, missisque potentibus urbes
> Libera Romano liquerunt omnia regno.

But the *jus regium*, what it is in the consent of nations, who please

[u] L. 1. ff. de constitut. princip. [Digest., lib. i. tit. 4. l. 1.] et § 'Sed et quod principi,' instit. de jure natur. [lib. i. tit. 2. § 6.] et præf. pandect. l. 1. ff. de offic. præf. præt. [Digest., lib. i. tit. 11.] et Cod. de vet. jur. enucleand., l. 1. § 'Sed et hoc.' [Cod. Justin., lib. i. tit. 17. l. 1. § 7.]

[x] [Ligurin.] lib. viii. [p. 408. in vett. script. German. J. Reuberi, fol. Hanov. 1619.]

[y] ['fodder.']

may see in Aristotle's Politics, *lib. iii. et iv.*; in Polybius, *lib. vi.*; Herodotus, *in Euterpe*, in Halicarnassæus, *lib. iv., v., vii.*; in Valerius Maximus, *lib. vii. in orat. qua suadet concordiam patrum et plebis, in fin.*; in Tacitus, *iv annal.*; in Suetonius, *in Tiberio*, c. 30; in Dion. *lib. liii.*, and in the later politics, Fabius Albergatus, Zimara, Bodinus, Aretinus, and generally in the commentators upon Aristotle.

§ 17. 2) It consists in the king's immunity from obligation to some solemnities of law to which his subjects are obliged. *Ratum non esse actum, etiamsi actio non habeat plenam rectitudinem, dum jus desit*, say the lawyers. Of which nature is that for which Æneas Sylvius, afterwards pope Pius the second[z], laughed at Henry the sixth of England, that his public instruments had no test but his own, and he wrote *teste meipso*, 'witness ourself:' in which the king doth imitate the King of kings, of whom S. Austin[a] says, *Testem se dicit futurum, quia in judicio suo non indiget testibus:* He swears by Himself, because He hath none greater; and is 'His own witness, because He needs no other:' and it is enough that a king says it, because his word ought to be great and venerable, as his power and his majesty. And it was not only in the matter of coercion, but of solemnities, true which Justinian[b] said, *Omnibus a nobis dictis imperatoris excipiatur fortuna, cui et ipsas Deus leges subjecit*, 'the fortune of the emperor is to be excepted from the edge and from the forms of laws, because God himself hath made the laws subject to the emperor.'

§ 18. 3) The king is therefore *solutus legibus*, or 'free from laws,' because he can give pardon to a criminal condemned: for the supreme power is not bound to his own laws so, but that upon just cause he can interpose between the sentence and the execution. This the stoics allowed not to any wise man, as supposing it to be against justice; and to remit due punishment is to do what he ought not: for what is due is just, and what is against that is unjust. All which is very true, but nothing to the purpose. For it is true, that it is but just that offenders should be punished; it is due, that is, they are obliged to suffer it; *pœna debita ex parte reorum*, it is their debt, not the king's; they are obliged, not he: and yet it is just in him to take it, that is, he may; but he is not obliged in all cases to do it. And in this also he is an imitator of the economy of God, who, according to that of Lactantius, *legem cum poneret non utique sibi ademit omnem potestatem, sed habet ignoscendi licentiam*; 'God and the vicegerent of God when they make laws have not exauctorated themselves: but as that law is an efflux of their authority, so it still remains within the same authority that they can pardon offenders.' Thus David pardoned Shimei and Joab, and would fain have pardoned Absalom, if the hand of Joab had not been too quick for

[z] Comm. Pii 2. lib. iii. [?]
[a] Lib. xx. de civit. Dei, cap. 26. [tom. vii. col. 611 E.]
[b] Nov. 105. [Authent. coll. viii. tit. 6. cap. 2. § 4.]

him. And this cannot be denied to the supreme power, because the exercise of this is one of the greatest virtues of a prince: which was well observed by Pericles[c] on his death-bed, when his weeping friends about him praised some of them his eloquence, some his courage, some his victories, lifting up his head a little, *Et quid hoc est?* saith he, *aut parva aut fortuita laudatis: at illud maximum omittitis, quod mea opera nemo pullam vestem sumpserit.* That he had no public executions, that no man was put to wear blacks for his friend, was a clemency greater than all the praises of eloquence or a prosperous fortune.

—— Quisquis est placide potens
Dominusque vitæ, servat innocuas manus,
Et incruentum mitis imperium regit,
Animoque parcit, longa permensus diu
Permensus ævi spatia, vel cœlum petit,
Vel læta felix nemoris Elysii loca[d].

But all the world commends clemency, the gentle hand of a prince, his unwillingness to kill, his readiness to save: for, *Principi non minus turpia multa supplicia, quam medico funera,* 'many executions are as great a dishonour in a prince's reign as many funerals in a physician's practice:' and therefore Cassiodore[f] says that 'a good and a gentle prince will sometimes pass the limits of equity that he may serve the ends of clemency;' *quando sola est misericordia cui omnes virtutes cedere honorabiliter non recusant,* 'for to mercy all other virtues count it honour to give place.' And this Charles the fifth and Maximilian the second signified by their device of an eagle perching upon a thunderbolt, with an olive in her beak: and Nerva and Antoninus Pius impressed upon their money a thunderbolt upon a pillow, to signify that vindictive justice ought to sleep sometimes. Now certainly this being so great an excellency in a prince, is not greater than his power. *Imperatori licet revocare sententiam, et reum mortis absolvere, et ipsi ignoscere; quia non est subjectus legibus qui habet in potestate leges terræ,* saith S. Austin: 'the emperor who can make laws is not subject to laws, or so tied to them but that he may revoke his sentence and pardon a criminal.'

§ 19. This I say is part of his royalty; but is only then to be practised when it can consist with the ends of government, that is, when the public interest can be preserved, and the private injury some other way recompensed. These indeed are the general measures not of the prince's power, but of his exercising this power justly.

§ 20. 1) When the criminal is a worthy person and can be beneficial to the republic. Thus in the Low Countries a pardon in ordinary cases of felony is granted of course to him that can prove he hath

[c] Plutarch. in Pericle, cap. 38. tom. i. p. 669.]
[d] Sen. Herc. fur. [739.]
[e] Senec. de clement. [lib. i. cap. 24. tom. i. p. 464.]
[f] Variar., lib. ii. [epist. 9.]

invented some new art: and one lately saved his life by finding out a way exactly to counterfeit old medals.

21. 2) If the person hath already deserved well of the public. Thus Horatius Cocles[g] was spared though he killed his sister, because he got honour, and liberty, and safety, and dominion to Rome, by killing the three brothers, the Curiatii: and Solomon spared the life of Abiathar the high-priest[h], because he bore the ark before David, and was afflicted in all his troubles.

§ 22. 3) When the criminal can be amended, and the case is hugely pitiable, and the fact not of greatest malignity. Thus oftentimes we see young men pardoned, and the first fault lightly punished; and because young Cæsar was in the flower of his youth and a princely boy, Sylla was more easily prevailed with for his pardon.

§ 23. 4) If the fault be private, and not brought to public courts, it is easily pardoned, though delated by a private information. *Conquiri ad judicium necesse non fuit:* some things when they are made public cannot be dismissed, but are not to be enquired after. It was the advice of Cicero to his brother Quintus concerning a certain criminal.

§ 24. But all this is upon supposition that the crime be not of greatest mischief, or foulest scandal and reproach; for if it be, nothing can be taken in exchange for it; a great virtue cannot make compensation for a very great crime: and this is particularly true of treason, of which those words of Bartolus are to be understood, *De offensionibus erga dominum non est compensatio ad servitia eidem impensa,* 'the services done to a lord cannot make satisfaction for a conspiracy against him.' And therefore the Romans caused Manlius Capitolinus to be thrown headlong from that rock from whence he had thrown the Gauls when he saved the city. He produced the spoils of thirty enemies, forty donatives from generals, two civic crowns, eight murals; yet all would not save his life and get his pardon. But yet in these things the supreme power is so free from laws that it does these things irregularly; *clementiam liberum habere arbitrium,* said Seneca[i], 'clemency hath a great liberty, and a free choice:' but they are obliged only to see that the public be not prejudiced, and that every private interest be secured by causing amends to be made to the injured person where it can; and then it is true of every supreme prince which Seneca[k] advised Nero often to remember, *Occidere contra legem nemo potest*[l]*; servare nemo præter me,* 'no man at all can put a man to death against the law; and none can save except the prince.'

§ 25. 5) The supreme power is above the laws, because he can dispense, he can interpret them, and he can abrogate them, he can

[g] [The same mistake occurs above, p. 140.]
[h] [1 Kings ii. 26.]
[i] [De clement., lib. ii. cap. 7. tom. i. p. 482.]
[k] [ibid., lib. i. cap. 5. p. 434.]
[l] ['nemo non potest.']

in time of necessity govern by the laws of reason without any written law, and he is the judge of the necessity. Thus the kings of Israel had power over the judicial laws, though of the divine sanction. For God forbad that the corpse of a malefactor should hang after sunset upon the accursed tree; but yet Maimonides says that the king *suspendit et relinquit suspensos diebus multis,* 'he hangs them and leaves them hanging for many days,' when it is necessary by such terror to affright the growing impiety of wicked men; that is, when the case was such that the laws were capable of equity or interpretation. For this was not merely an effect of his power, but of his reason too. It was a custom among the Jews to condemn but one person in one day, unless they were in the same crime, as the adulterer and the adulteress; but the king might condemn many at once when it was for the interest of justice and the republic. Thus their king could by the prerogative of his majesty proceed summarily, sit in judgment alone without assessors, condemn upon the testimony of one, and by the confession of the party; which the sanhedrim might not do, but were tied to acquit him that confessed the fact. Add to these, the supreme can in some cases be judge and witness[m]; that is, can himself condemn a criminal for what himself only saw him do. He can also judge in his own case; as if he be injured, railed upon, defrauded, or the like: all which are powers above the law, and here were to be named for the understanding of the present rule; but how they are to be conducted is of distinct and special consideration, and to be reserved to their proper places. I end this whole enquiry with that of Statius[n].

> ——— quid enim terrisque poloque
> Parendi sine lege manet? vice cuncta geruntur,
> Alternisque premunt: propriis sub regibus omnis
> Terra; premit felix regum diademata Roma:
> Hanc ducibus frænare datum, mox crescit in illos
> Imperium Superis.———

There is nothing in the earth but is under a law and tied to obedience: all the earth are under kings, and the kings are under the Romans, and the Romans under their princes, and their princes under God; who rules them by His own laws, and binds them to rule by their country's laws, and ties them to do justice, and is pleased when they shew mercy. But as they are to do justice by the sentence of the laws, so they must not shew mercy against law; for even the prerogative of kings is by law, and kings are so far above their laws as the laws themselves have given leave. For even the ὕφεσις ἀκριβείας ἐν δέοντι, 'the remission of the rigour of the law,' the very chancery and ease of laws, is by law established.

[m] Vani capitis est existimare superiorem non posse evocare sine causæ cognitione.—Innoc. in c. 'Ad aures,' de temp. ord. [In decret. Greg. IX. lib. i. tit. 11. cap. 5.]

[n] [Sylv. iii. 3. 48.]

RULE III.

IT IS NOT LAWFUL FOR SUBJECTS TO REBEL, OR TO TAKE UP ARMS AGAINST THE UPREME POWER OF THE NATION UPON ANY PRETENCE WHATSOEVER.

§ 1. WHEN Nehemiah was deputed by Artaxerxes to be governor of Judæa, and had commission to rebuild Jerusalem and the temple, the neighbour kings that opposed him were enemies to Artaxerxes, because Nehemiah was lieutenant to the king. "He that despiseth Me despiseth Him that sent Me," saith our blessed Saviour[o]. *Senatus faciem secum attulerat, auctoritatem reipublicæ,* said Cicero[p] of one that was deputed and sent from the senate: he had the gravity of the senate and the authority of the commonwealth. Now this being true of the supreme power in every government, that it is *potestas Dei vicaria,* it is 'the minister of God,' appointed by Him, set in His place, invested with a ray of His majesty, entrusted with no power but His, representing none but Him, having received the sword from His hand, the power of life and death from His warranty; it must needs follow that he who lifts up his hand against that supreme person or authority that God hath appointed over him is impious against God and fights against Him. This the apostle[q] expressly affirms, and there needs no more words to prove the rule, "He that resists, resists the ordinance of God." He does not say, he that does not obey is disobedient to God, for that is not true. Sometimes it is necessary not to obey, as it happened to the captive Jews under Nebuchodonosor, and to the apostles under their princes; they could not obey God and them too: and then the case of conscience was soon resolved. But they that could not obey could die; they could go into the fire, suffer scourgings and imprisonments; that was their ἓν μέγα, their great sanctuary: which in behalf of the Christians Gregory Nazianzen[r] thus expresses, ἓν ἔχω πρὸς πάντα φάρμακον, μίαν ὁδὸν εἰς νίκην (ἐν Χριστῷ καυχήσομαι), τὸν ὑπὲρ Χριστοῦ θάνατον, 'I have but one remedy against all my evils, one way to victory, thanks be to Christ, I can die for Him:' that's ὑποτάσσεσθαι καὶ μὴ ἀντιτάσσεσθαι, to obey where they can, and where they cannot, to be sure to lie down under the burden which they cannot carry. For though in some cases it is lawful not to obey, yet in all cases it is necessary not to resist.

§ 2. I do not know any proposition in the world clearer and more certain in christianity than this rule, and therefore cannot recount any greater instance of human infirmity than that some wise men should be abused into a contrary persuasion. But I see that interest and passion are always the greatest arguments, where they are

[o] [Luke x. 16.]
[p] [Philipp. viii. cap. 8.]
[q] [Rom. xiii. 2.]
[r] [Orat. ii. § 87. tom. i. p. 53 D.]

admitted. But I have an ill task to write cases of conscience, if such things as these shall be hard to be persuaded: for there are very few things in which any man is to hope for half so much conviction as in this article lies before him in every topic; and if I should determine no cases but upon such mighty terms as can be afforded in this question, and are given, and yet we prevail not, I must never hope to do any service to any interest of wisdom or peace, of justice or religion. And therefore I am clearly of opinion that no man who can think it lawful to fight against the supreme power of his nation, can be fit to read cases of conscience; for nothing can ever satisfy him whose conscience is armour of proof against the plain and easy demonstrations of this question. But this question is of the same nature as all clear and necessary truths, never obscure but when it is disputed; certain to all men and evident if they will use their own eyes; but if they call for glasses of them that make a trade of it, it may chance not to prove so. But I will speak of it with all easiness and simplicity.

§ 3. 1) The scripture is plain, "Curse not the king, no not in thy thought[s]:" and, "I counsel thee to keep the king's commandment, and that in regard of the oath of God" .. "for he doth whatsoever pleaseth him. Where the word of a king is, there is power, and who may say unto him, What doest thou[t]?" "Against him there is no rising up[u]." There are many more excellent words in the Old testament to this purpose; but nothing can be plainer than these dogmatically to establish the doctrine of the rule. No man can question him, no man may rise up against him; he hath power, he hath all power; we are by the law or the oath of God bound to keep his commandment; and after all, we must not reproach him in our secret thoughts. No man needs this last precept but he that thinks the king is an evil man, or hath done wrong: but suppose he have, or that he is supposed to have, yet curse him not, 'do not slight him,' so it is in the Hebrew[v]; *regi ne detrahas*, so it is in the vulgar Latin, 'Disparage not the king:' but the Chaldee paraphrase adds, 'Even in thy conscience, in the secrets of thy heart speak not evil of the king, and in the closets of the chambers of thy house speak not evil of the wise man; for the angel Raziel does every day from heaven cry out upon the mount of Horeb, and his voice passes into all the world: and Eliahu, the great priest, flies in the air of heaven like a winged eagle, and tells the words which are spoken in corners by all the inhabitants of the earth.' By the way I only observe this, that we are forbidden to 'speak evil of the rich' or the mighty man; 'the wise man,' so the Chaldee[x] calls him, that is, the princely men of the world, the magistrates and nobles; whom S. Peter[y] calls τοὺς

[s] [Eccles. x. 20.]
[t] [Eccles. viii. 2—4.]
[u] [Prov. xxx. 31.]
[v] מֶלֶךְ אַל תְּקַלֵּל.
[x] [Walton, bibl. polyglott. ad loc.]
[y] [1 Pet. ii. 13.]

ἡγεμόνας διὰ βασιλέως πεμπομένους, 'captains' or 'rulers sent by the king:' of these we must say no evil in our private houses, lest a bird of the air, lest that which hath wings, that is, lest the angel that attends us orders it so as to pass into publication; for the government of the other world reaches strangely even to us, and we speak not a word in vain, but by the divine providence it is disposed to purposes that we understand not. But when he speaks of the king or the supreme, whom S. Peter calls τὸν ὑπερέχοντα, then it is μὴ καταράσῃ τὸν βασιλέα ἐν τῇ συνειδήσει, μηδὲ ἐν κρυπτῷ τῆς καρδίας, 'call him not accursed in thy heart, not so much as in thy thought;'[a] which because it is only perceived by God who is the searcher of the heart, it shews plainly that as angels take care of the rich and the wise, the mighty and the nobles, so kings are the peculiar care of God, who is the King of kings and the Lord of lords. But then (to leave all curiosities) if we may not speak or think reproachfully of the king, we may not do that which is more and that which is worse: and I think there needs no more to be said. But it is as clear all the way[z].

§ 4. In the New testament, sufficient are the excellent words of our blessed Saviour[a], μὴ ἀντιστῆναι τῷ πονηρῷ, 'not to resist evil,' that is, not to stand against it, not to oppose evil to evil; which obliges all Christians that at least without the magistrate they cause no return of evil to the offending person; that no man be his own avenger, for vengeance belongs to God, and He hath delegated that to none but to the supreme magistrate, who is θεοῦ διάκονος ἔκδικος εἰς ὀργὴν, 'God's minister to be a revenger of wrath under Him[b].' Now if no man must pay evil to his brother that hath injured him but by the hand of the supreme power, how can it be possible that it can be lawful to render evil for evil to the supreme power itself? by whose hands shall that be done? By none but by his superior, who is God alone, who will take care to punish evil kings sufficiently: only we must not do it; we must not pray Him to do it; for that is expressly against the words of Solomon, that's 'cursing the king in our thought,' and not at all to be done. But besides this, there are many more things spoken by our blessed Lord to determine us in this affair. "Render to Cæsar the things that are Cæsar's;" and to Pilate Christ said[c], "Thou shouldest have no power over Me unless it were given thee from above;" meaning that Cæsar's power, whose deputy Pilate was, was derived from God, and consequently that, except God, none is greater upon earth than Cæsar; and again[d], "If My kingdom were of this world, My servants would fight for Me;" which plainly enough confirms the power of the militia in the supreme magistrate, Christ leaving it where He found it.

[z] ['clear as the way'—B, C; 'clear as the day'—D.]
[a] [Matt. v. 39.]
[b] [Rom. xiii. 4.]
[c] [John xix. 11.]
[d] [chap. xviii. 36.]

§ 5. But that there may be no dispute concerning these things, the apostles, who are the expounders of the words of Christ and the meaning of His spirit, tell us plainly, μὴ ἀντιτάσσεσθαι, 'to be subject,' ἐξουσίαις ὑπερεχούσαις[e], 'to supreme powers;' the same with S. Peter's[f] βασιλεῖ ὡς ὑπερέχοντι, 'to the king as to the supreme;' that is to the king, if he be a king indeed, if he be the supreme; to be subject to these powers, and not to resist, for these reasons. α) Because this supreme power is ordained of God: β) because he that resists, resists God whose minister the prince is: γ) because God hath armed the powers which He ordained with a sword of power and revenge: δ) because it is for our good that we submit to him; for he is God's minister for good, that is, for the public good, under which thine is comprehended: ε) because it is necessary; the necessity being apparent in the nature of the thing and in the commandment of God: ζ) because God hath bound our conscience to it: η) He hath tied this band upon us with fear also: and θ) lastly, because whoever does not obey where he may lawfully, and whosoever does in any case resist, shall receive damnation to himself both here and hereafter; here upon the stock of fear, hereafter upon the account of conscience; for both for fear and for conscience we must obey in good things and lawful, and we must not resist in any. For indefinitely we are commanded not to resist, without any distinction or reservation of case; and *Ubi lex non distinguit, nemo distinguere debet.* He that will go about to be wiser than the law, in equity will not be better than a fool. This therefore is the sum of S. Paul's discourse, Rom. xiii. *per totum.*

§ 6. S. Paul was the doctor of the gentiles, S. Peter of the Jews; and therefore this doctrine is sufficiently consigned to all the world: for S. Peter hath preached this doctrine as largely as S. Paul, "Submit yourselves to every ordinance of man, for the Lord[g]," that is, for His sake, upon His commandment, and for His honour; these ordinances being God's ordinances, ὑπὸ Θεοῦ τεταγμέναι, 'they are ordained by God,' all of them, the king principally, his captains and officers which he hath sent in the next place. But him and his ministers we must receive, and honour, and obey, and submit to them; for it is God's case and His ministers'; God and His ministers and lieutenants, the king and his. He that despises him whom the king sends, despises the king; and he that despises him whom God sends or makes His deputy, despises God. Submit therefore, for it is the will of God; submit, for this is 'well-doing;' submit, for so we 'shall put to silence the ignorance of foolish men:' meaning that since the enemies of Christ are apt to speak evil things of you, glad would they be if they had cause to accuse you for not being obedient to government; and some are ignorant, and foolishly pretend the liberty and privileges of saints against the interests of obedience: the mouths of these men must be stopped, and you

[e] [Rom. xiii. 1.] [f] [1 Pet. ii. 13.] [g] [1 Pet. ii. 13, ad 17. vers.]

must submit to kings, that you may please God and confute the adversaries. Now the specification of this great duty and the particular case of conscience follows; "Fear God, honour the king: servants, be obedient to your masters; not only to the good and gentle, but also to the froward;" τοῦτο γὰρ χάρις, 'for this is thankworthy:' and this is full to the question in hand. For the general precept which S. Peter gave is, ὑποτάγητε πάσῃ ἀνθρωπίνῃ κτίσει, 'submit to every ordinance,' to the king, to his magistrates or deputies, and captains, and lastly submit to the lowest of all dominions, even servants to their masters; not only to the good and gentle, but to the morose and harsh. Now if so to inferior masters, whose dominion is no greater than their interest, and their interest is no greater than their price, and is still under the power of kings; much more to kings or to the supreme power. And indeed even subjection to kings is the gentlest and most eligible kind of service. "Then would My servants fight," said Christ, meaning it of the subjects of His kingdom: and Livy[h] calls *populum Romanum servientem cum sub regibus esset*, 'they did serve their kings.' And indeed as the governments of the world then were, kings were most absolute, and the people entirely subject, and far from liberty: and therefore this of servants might very well be a specification and a particular of their duty to kings and captains; and whether it were or no, it is for the former argument (from the less to the greater affirmatively) infinitely certain that the same duty is due to kings though harsh and cruel: for indeed there were then none else; Nero was the supreme, and he was none of the best that ever wore purple.

§ 7. It were very easy to draw forth more arguments from Scripture to this purpose; but I forbear to name more than this abundance which is contained in these now cited: but I shall not omit to observe that the apostles did make use of that argument which I urged out of Solomon, that we are "not to speak evil of the king;" from whence the unlawfulness of resisting is unanswerably concluded: for S. Jude[i] giving the character of the worst of men and the basest of heretics, reckons up in the bill of their particulars, that "they despise dominion and speak evil of dignities;" which as it is an infallible mark of an evil person, so it is a using of a prince worse than S. Michael the archangel durst use the devil; against whom, because he was a spirit of an higher order, though foully changed, he durst not bring a railing accusation, κρίσιν βλασφημίας, 'a judgment,' or 'accusation with blasphemy in it:' for all evil language of our superior is no better than blasphemy; 'he did blaspheme God and the king,' was the crime pretended against Naboth.

§ 8. If from the plain words of Scripture we descend to the doctrine and practices of the church of God, we shall find that all Christians when they were most of all tempted, when they were persecuted and oppressed, killed and tormented, spoiled of their goods,

[h] [lib. ii. cap. 12.]

[i] [Jude 8.]

and cruelly and despitefully used, not only did not rebel when they had power and numbers, but professed it to be unlawful. But this I shall draw into a compendium; because it being but matter of fact, and the matter in Scripture being so plain that it needs no interpretation, the practice and doctrine of the church, which is usually the best commentary, is now but of little use in a case so plain. But this also is as plain itself, and without any variety, dissent or interruption, universally agreed upon, universally practised and taught, that let the powers set over us be what they will, we must suffer it, and never right ourselves. Tertullian[k] boasts with confidence, that when Pescennius Niger in Syria, and Clodius Albinus in France and Britanny rebelled against Septimius Severus, a bloody and cruel emperor, and pretended piety and public good, yet none of the Christians joined with either. The Theban legion in the eighteenth year of Diocletian[l] suffered themselves to be cut in pieces every man, six thousand six hundred sixty and six in number, by Maximianus the emperor; no man in that great advantage of number and order and provocation lifting up their hands, except it were in prayer: of these Venantius Fortunatus[m] hath left this memorial,

> Queis positis gladiis sunt arma e dogmate Pauli,
> Nomine pro Christi dulcius esse mori.
> Pectore belligero poterant qui vincere ferro
> Invitant jugulis vulnera chara suis.

They laid down their weapons and lift up their arms; they prayed and died in order: and this they did according to the doctrine of S. Paul. But when Julian was emperor, an apostate from his religion, a great persecutor of the Christians, and who by his cruelty (as Nazianzen[n] observes) brought the commonwealth itself in danger, though his army did most consist of Christians, yet they had arms for him, but none against him, save only that by prayers and tears they diverted many of his damnable counsels and designs. But the particulars are too many to recite what might be very pertinent to this question from antiquity. I shall therefore serve the interest of it as to this topic by pointing out the writings of the ancient doctors where they have given testimony to this great article of our religion, which who please may find in S. Clement, *Constit. l. vii. c.* 17[o]; S. Irenæus, *lib. v. advers. hæres., c.* 20.[p] Justin Martyr, *Apolog. ii. ad Antonin. Imperatorem*[q]; Tertullian *ad Scapulam*[r], *et Apolog. adv. Gent., cap.* 30[s]; S. Cyprian *ad Demetrianum*[t]; Hosius *apud Athanas. ad solitariam vitam agentes*[u], Liberius, *ibid.*[x]; S. Hilary *ad Imperat.*

[k] [Ad Scap., cap. 2. p. 69 B.]

[l] [See the Passio Agaunensium martyrum falsely attributed to Eucherius; Actt. sanct. Bolland., Sept. 22. tom. vi. p. 345.]

[m] Biblioth. pp. tom. viii. edit. Binian. [lib. ii. carm. 15. in max. bibl. vet. patr., tom. x. p. 537 E.]

[n] Orat. i. in Julian. [al. orat. iv. e. g. § 96. p. 129.]

[o] [Coteler. patr. apost., tom. i. p. 370.

[p] [al. cap. 24. p. 321.]

[q] [p. 54.]

[r] [cap. 2. p. 69.]

[s] [p. 26 sqq.]

[t] [p. 192.]

[u] [tom. i. p. 371.]

[x] [p. 367.]

Constantium[y]; S. Athanasius *ad Antiocn., quæst.* 55[z], *et Apolog. ad Constant.*[a]; *vide etiam factum Basilii in Monodia Nazianz. inter opuscula Basilii*[b], Nazianzen *ii. orat. contr. Julian.*[c]; Optatus Milevitanus, *lib. iii. contra Parmen.*[d]; S. Chrysostom. *orat. ii. ad pop. Antioch., tom.* 6. *edit. Savil.*[e] S. Ambrose *Epist. xxxiii, ad Marcellinam*[f]; S. Cyril. *in Evang. Johan., l. x. c.* 36[g]; S. Hieron. *comment. in ii. Dan.*[h]; S. Augustin., *lib. iv. de civit. Dei, c.* 33[i], *et lib. v. c.* 21[k], *et in Psalm. cxxiv.*[l]; Anastasius P. *epist. unic. ad Anastasium Imper.*[m], Symmachus P. *ad eundem Anast. Imp.*[n], Leo P. *ad Leonem Imperat.*[o] *et epist. xiii. ad Pulcheriam*[p]; S. Gregor. Mag. *Epist. l. vii. ep.* 1[q].

§ 9. After him succeeded (Sabinianus being interposed for one year only) Boniface the third, who obtained of Phocas to be called universal bishop: since when *periit virtus imperatorum, periit pietas pontificum*, says one, 'the kings lost their strength and the bishops lost their piety;' yet in the descending ages God wanted not many worthy persons to give testimonies to this great truth and duty. Such were Stephen the sixth *apud Baronium tom. x. A.D.* DCCCLXXXV. *n.* 11[r], Gregorius Turonensis, *hist. lib. v. cap.* 1[s], *Concil. Toletan. v. can.* 2[t], *et Concilium Toletan., vi. c.* 14[u], Fulgentius *ad Thrasimundum regem*[x], Damascen., *parallel. i. c.* 21[y], V. Bede, *lib. iv. expos. in Samuel.*[z], *Leo IV. cap.* 'De capitulis,' *dist.* 15[a], S. Bernard *epist.* 221. to Lewis le gros[b]: *vide etiam epist. Walthrami epis. Nanumberg.*[c] *quæ habetur in appendice Mariani Scoti*[d].

§ 10. Now it is very observable that in the succession of about six ages, in which the holy doctors of the church gave such clear testimony of the necessity of obeying even the worst princes, and many thousands of holy Christians sealed it with their blood, there was no opposition to it; and none of any reputation, no man of learning did any thing against the interest or the honour of princes, excepting only (so far as I have observed) Lucifer Calaritanus, who indeed spake rude and unbeseeming words of Constantius the Arian

[y] [vid. lib. ii. col. 1225 sqq.]
[z] [? quæst. 120. tom. ii. p. 297.]
[a] [Apol. i. p. 296 sqq.]
[b] [fol. 63. ed. Lat. fol. Bas. 1520.]
[c] [al. orat. iv. e. g. § 37. tom. i. p. 172.]
[d] [cap. 3. p. 51.]
[e] [Ed. Ben. tom. ii. p. 33.] Et in 1 Timoth., cap. ii. v. 1. [tom. ix. p. 579.]
[f] [al. epist. xx. tom. ii. col. 857 sq.]
[g] [lib. xi. cap. 36. tom. iv. p. 1018.]
[h] [tom. iii. col. 1078.]
[i] [tom. vii. col. 112.]
[k] [col. 138.]
[l] [tom. iv. col. 1415.] Et epist. liv. ad Macedon. [al. epist. cliii. tom. ii. col. 524 sqq.] et tract. vi. in Joann. [tom. iii. part. ii. coll. 340, 1.]
[m] [Concill., tom. ii. col. 947 sqq.]
[n] [Apud Baron. A.D. DIII. n. 18. tom. vii. p. 559.]
[o] [Epist. lxxv. p. 145.]
[p] [p. 108.]
[q] [vid. lib. iii. epist. 65. tom. ii. col. 675, 6.]
[r] [p. 601.]
[s] [p. 173, ed. 8vo. Par. 1610.]
[t] [Concill., tom. iii. col. 598.]
[u] [tom. iii. col. 606.]
[x] [lib. i. p. 136, ed. 8vo. Col. Agr. 1526.]
[y] [tom. ii. p. 358.]
[z] [tom. iv. col. 303.]
[a] [Gratian. decret., part. 1. dist. x. cap. 9. col. 35.]
[b] [coll. 1575, 6.]
[c] [lege Megburg.]
[d] [col. 443, ed. fol. Bas. 1559.]

emperor; but that he may lessen nothing of the universal consent to this doctrine, S. Ambrose[e] does lessen very much of his reputation, saying that though he was with the true believers banished for religion, yet he separated himself from their communion. But in the next period, I mean after Gregory the great, it was not unusual for the bishops of Rome to stir up subjects to rebel against their princes, and from them came the first great declension and debauchery of the glory of christian loyalty and subjection to their princes; witness those sad stories of P. Gregory the seventh, P. Urban, and Paschal, who stirred up the emperor's son against the father. I speak it to this purpose, because it produced an excellent epistle from the churchmen of Liege in behalf of the emperor and of their bishop, who with his chapter was excommunicated for adhering to his loyalty, and Robert earl of Flanders commanded by the pope to destroy him and all his priests. But in behalf of princes and the duty of subjection to them many excellent things were spoken; divers judgments of God fearfully falling upon rebellious people are recited, not only in that epistle of the clergy of Liege[f], but in the life of Henry the fourth, emperor, *in fasciculo rerum sciend.*, published at Colen[g]. From all these fathers and ancient authors now cited, *magnum mundo documentum datum est* (that I may use the words of the author of the book last cited) 'a great instruction and caution is given to the whole world that no man rise up against his prince.' For all these authors give clear and abundant testimony to these truths, that the power of the supreme magistrate is immediately from God, that it is subject to God alone, that by Him alone it is to be judged, that he is the governor of all things and persons within his dominions, that whosoever speaks reproachfully of him cannot be innocent, that he that lifts up his hand against him strikes at the face of God; that God hath confounded such persons that against the laws of God, and their own oaths, and the natural bonds of fidelity, have attempted to spoil their supreme lords; that Herman and Egbert that did so were confounded for so doing, as though they had never been, that Rudolphus had his hand cut off and felt divers other of the divine judgments for this impiety. And this being the constant universal doctrine of the church of God for twelve hundred years, and this derived from the plain, the express, the frequent sayings and commandments of God in the Old and New testament, declared by His prophets and apostles, and by His most holy Son himself, nothing can with greater certainty determine and conduct our conscience than this rule. For the confirmation of which I remember S. Bernard[h] tells a pretty little story, in a sermon upon these words of Christ, "I am the vine:" *Bene quidem rex cum percussus humana sa-*

[e] Orat. in obit. fratr. Satyri. [tom. ii. col. 1127.]

[f] [Inter concill. Harduin., tom. vi. part. 2. col. 1769.]

[g] [Apud Simon. Scard. [Fascic. rer. expetend., per Orth. Grat., fol. Colon. 1535; et cura E. Brown, tom. i. p. 92, fol. Lond. 1690.]

[h] [De pass. Dom., cap. 4. col. 1172.]

gitta, &c., 'It was well said of a king, who being wounded with a barbed arrow,' they that were about him desired he would suffer himself to be bound till the head were cut out, because the least motion irregular would endanger his life; he answered, *Regem ligari nullo modo decet*, 'a king must at no hand be bound;' let the king be ever safe, but let his power be at liberty. I end this topic with the words of S. Austin[i] and of the sixth council of Toledo[k], *Non tribuamus dandi regni atque imperii potestatem nisi vero Deo*, 'let us attribute the power of giving the right of empire to none but to the true God alone.' *Ille unus verus Deus qui nec judicio nec adjutorio deserit genus humanum, quando voluit et quantum voluit Romanis regnum dedit: qui dedit Assyriis, vel etiam Persis; .. qui Mario, ipse Caio Cæsari; qui Augusto, ipse et Neroni; qui Vespasianis, vel patri vel filio, suavissimis imperatoribus, ipse et Domitiano crudelissimo; et ne per singulos ire necesse sit, qui Constantino christiano, ipse apostatæ Juliano.. Hæc plane Deus unus verus regit, et gubernat ut placet:* 'the one true God, who never leaves mankind destitute of right and help, hath given a kingdom to the Romans as long as He please and as much as He please. He that gave the supreme power to the Assyrians, He also gave it to the Persians. He that gave it to Marius a common plebeian, gave it to Caius Cæsar who was a princely person. The same authority He gave to Nero that He gave to Augustus; He gave as much power and authority to the most cruel Domitian as He gave to Vespasian and to Titus, the gentlest and the sweetest princes; and to be short, He gave the authority to Constantine the Christian, and the same afterwards to Julian the apostate: for this great affair He rules and governs as He please.'

§ 11. But all this is no more than what natural and necessary reason does teach all the world:

Hanc Deus et melior litem natura diremit[l]:

For this which I have alleged from the fathers is properly a religious reason. It is God's power which is in the supreme magistrate, whether he be good or bad; therefore whoever rebels against him, rebels against the power and dispensation of God; and to this there is nothing reasonable to be opposed. But then that which I am now to say is derived to us by the reason that every man carries about him, by the very law of nature.

Naturam vero appello legem omnipotentis
Supremique Patris, quam prima ab origine rerum
Cunctis imposuit rebus, jussitque teneri
Inviolabiliter.———

'By the law of nature I mean the prime law of God which He unalterably imposed upon all men in their first creation, that by reason

[i] Lib. v. de civit. Dei, cap. 21. [tom. vii. col. 138.]

[k] [vid. can. xiv. tom. iii. col. 606.]

[l] [Ovid. metam., lib. i. 21.]

and wise discourses they should govern themselves in order to that end which is perfective of human nature and society.' The law of nature is the law of God, which is reasonable and necessary to nature: now by this law or necessary reason we find it very fit that we should devest ourselves of the practice and exercise of some rights and liberties which naturally we have. So Aristotle[n] observes, *homines adductos ratione multa præter mores et naturam agere, si aliter agi melius esse sibi persuaserint,* 'men do some things against their natural inclination, if by natural reason they find it best to do so.' Now nature having permitted every man to defend himself as well as he can against violence, did by an early experience quickly perceive that few men had power enough to do it against every violent man; and therefore they drew into societies, gathered their strength, and it was put into the hands of them who by a joined strength could, and by promise and interest and duty would do it: and by this means the societies had peace, and might live quietly. Now the natural consequent is this, that if all our power is united and intrusted to one head, we must not keep it in our hands. If the supreme power be the avenger, we must not meddle; if he be judge we must submit, for else we are never the nearer to peace. For when we were so many single persons we were always in war, but by unity and government we come to peace: therefore whatever we could do alone, we having put into the common stock, our natural right of defence is in the public hand, and there it must remain for ever; and we are to be defended by the laws, and they only are now the ministries of peace. This is S. Paul's[o] argument, "I exhort that prayers and supplications be made for all men; for kings and all that are in authority, that we may lead a quiet and a peaceable life in all godliness and honesty:" plainly implying that the security and peace of societies depends upon the power and authority of kings, and persons in eminency and trust; for none must make war but he that does it for all men's interest: and therefore it is peace with all that are under government; but then that which is designed to keep peace must feel no war from them whom it is designed to keep in peace, that they may not feel the evils of war. If government be necessary, it is necessary that we should obey it; if we must obey it, we must not judge it; if we must not judge it, we may not endeavour to punish it: and there is nothing in the world a greater destruction to its own ends, than the resisting or rebelling against government; because if we be above it, how are we subjects? if subjects, how are we its judges? if no judges how can we be avengers? if no avengers, why are we not quiet and patient? If we be not above we are below, and therefore there let us abide: but if we be above, then we are the supreme power; and then it is all one. That which is said all this while

[n] Polit., lib. vii. cap. 13. [tom. ii. p. 1332.]

[o] [1 Tim. ii. 2.]

concerns the subjects, and not the supreme, to whom by our natural necessities, by a general contract of mankind, by the law of nations, by the command of God, and by the civil laws of all republics the subject is bound, and does owe obedience and maintenance, and honour and peace. *Generale pactum est societatis humanæ obedire regibus suis,* said S. Austin [p], 'It is a covenant that all mankind have agreed in, to be obedient to their kings.'

§ 12. But all this is true: but since kings are for defence and justice, for good and not for evil, for edification and not for destruction, good kings must be obeyed. But what if they be evil and unjust, cruel and unreasonable enemies of their people, and enemies of mankind?

§ 13. This is that I have been saying all this while, that let him be what he will, if he be the supreme, he is superior to me, and I have nothing to do, but something to suffer: let God take care; if He please, I shall be quickly remedied; till then I must do as well as I can. For if there be any case in which the subjects may resist, who shall be judge of that case? can this case be evident and notorious? and does it always consist *in indivisibili?* If it does not, then many things are like it, and who can secure that the subjects shall judge right? For if they were infallible, yet who will engage that they will not do amiss? what warranty have we against the ambition and the passion and the interest of the reformers of supreme powers? And is it not better to suffer inconvenience from one than from every one that please? But if you allow one case, you must allow as many as can be reduced to it; and who is not witty enough against governors to find excuses enough to bring them down?

§ 14. 2) What remedy is there in case the supreme power be ill administered? will not any remedy bring greater evils than the particular injustices which are complained of? It was well said of Xenophon [q], ὅστις ἐν πολέμῳ ὢν στασιάζει πρὸς τὸν ἄρχοντα, πρὸς τὴν ἑαυτοῦ σωτηρίαν στασιάζει, 'he that opposes his general and prince opposes his own safety.' For consider, what order can be in a family, if the boys rule their fathers and rebel against their command? How shall the sick be cured, if they resist the advice and prescriptions of the physicians? And they that sail are like to suffer shipwreck, if the boatswain, and the swabbers, and the boys shall contradict the master. So it is impossible that there can be safety in a commonwealth, if they who are appointed to obey shall offer to rule. Φύσει γὰρ ἀναγκαῖά τινα καὶ σωτήρια τῷ μὲν ἄρχειν ἐν τοῖς ἀνθρώποις, τῷ δὲ ἄρχεσθαι τέτακται [r], 'for by nature it is necessary and profitable, and ordered accordingly, that one should rule and the rest should be obedient.'

[p] Lib. iii. Confess., cap. 8. [tom. i. col. 94 A.]

[q] [De exped. Cyri, lib. vi. cap. 1. § 19.]

[r] Dion Cassius. [lib. xli. cap. 33. p. 284.]

§ 15. And therefore these wild cases are not to be pretended against that which natural reason and natural necessity have established. We cannot suppose a king that should endeavour to destroy his kingdom. We may as well suppose a father to kill his children, and that therefore in some cases it may be lawful for children to rebel against their fathers, turn them out of doors, and, as they see occasion, cut their throats that the inheritance may be theirs. Whom can we suppose worse than Julian, than Domitian, than Nero? and yet these princes were obeyed, and did never proceed to the extremity of such desperate hostilities: nay Nero, as bad as he was, yet when he was killed, was quickly missed; for in a few months three princes succeeded him, and there was more blood of the citizens spilt in those few months than in Nero's fourteen years. And who please both for their pleasure and their instruction to read the encomium of Nero written by the incomparable Cardan, shall find that the worst of princes do much more good than they do harm. But, *semper corpori grave est caput*, 'the head always aches, and is a burden to the shoulders,' and we complain much of every little disorder. Put case a prince by injustice do violence to some of his subjects, what then? *Qui unum, qui plures occidit, non tamen reip. læsæ reus est, sed cædis*, said Seneca, 'it is not the killing of some citizens that destroys the commonwealth:' and there are not many princes that proceed so far as to do open and professed wrong to the lives of their subjects; but many subjects have done violence, open and apparent, to the lives of their princes, and yet the subjects are aptest to complain. *Quis princeps apud nos regnavit e vicecomitum aut Sfortiadum familia quem non aliquis civis noster etiam sine causa, sed sola ambitione, ferro aggressus sit? pauci certe*[r], 'which of our princes of such and such a family hath not been set upon to be murdered by some of their subjects, without cause, but merely out of ambition? very few.' And he that reads Hector Boethius his history of Scotland may say as much as Cardan, and for a longer time. Every man complains of kings and governors; we love them not, and then every little thing makes him a tyrant: but it is in this case as in the case of women (says Albericus Gentilis) we cannot be without them, and yet we are not pleased when we are tied to them. If any such thing could happen that a king had a mind to destroy his people, by whom should he do it? He alone can hardly do it; and he could hardly arm his people against themselves. But what should he get by it? he cannot be so unreasonable: but suppose it, what then? "Oppression will make a wise man mad," saith Solomon[s], and there are some temptations bigger than a man's strength; and this would be one of them, and the people would be vexed into the sin of rebellion; and then it may be, God would cut him off, and punish the people; and here would be calamity enough in this whole entercourse, but nothing lawful. For we have nothing dearer

[r] [Cardan. encom. Neron., tom. i. p. 186.]

[s] [Eccles. vii. 7.]

to us than our lives and our religion; but in both these cases we find whole armies of Christians dying quietly, and suffering persecution without murmur. But it cannot be done, it cannot easily be supposed that an evil prince should be otherwise than one that is cruel and unjust, and this to fall upon some persons: for let him be lustful, he shall not ravish the commonwealth; and if he be bloody, his sword cannot cut off very great numbers; and if he be covetous, he will not take away all men's estates: but if a war be made against him, these evils will be very much more universal; for the worst of princes that ever was hath obliged a great many, and some will follow him out of duty, some for fear, some for honour, and some for hopes; and then as there is no subject that complains of wrong but he hath under the government received more right than wrong, so there is none that goes to do himself right, (if that be all he intends, and not covetous and ambitious designs) but in the forcing it he will find more wrong than right.

§ 16. 3) But I demand, are there no persons from whom if we receive wrong we must not be avenged of them? To a Christian it had been a more reasonable enquiry, whether there be any persons of whom we may be avenged. Certainly there are none of whom we may be avenged without the aid or leave of the public power. But what if our father do us wrong; may we strike him? ὀργὴν πατρὸς φέρειν, 'to bear our father's unjust wrath' was one of the precepts the young man of Eretria had learnt of Zeno[t]: and what then if we be injured by the public father? *Magno animo regis velut parentis contumeliam tulit;* it was said of Lysimachus[u]: *et ut parentum sævitiam sic patriæ patiendo ac ferendo leniendam esse,* said Livy[x]: 'if we must bear with our fathers, so also with our princes.' *Vi regere patriam aut parentes, quanquam et possis, et delicta corrigas, importunum est,* said Sallust[y], 'though it were in your power, though you might reform some evils, yet to rule your parents or your prince by force is not reasonable.' And it was an excellent saying which Cicero[z] had from Plato, *Tantum contendere in rep. oportet quantum probare tuis civibus possis, vim neque parenti neque patriæ afferri oportere. Id enim Plato jubet, quem ego vehementer sequor: et qui hanc causam sibi fuisse ait reipublicæ non attingendæ, quod cum offendisset populum Atheniensem prope jam desipientem senectute, cumque eum nec persuadendo nec cogendo regi posse vidisset, cum persuaderi posse diffideret, cogi fas esse non arbitraretur:* 'to contend and fight in a commonwealth can never be approved by the citizens: strive so much as you can justify; but you must offer force neither to your parents nor to your country, that is, the supreme government of your country. And when Plato saw the people of

[t] [Ælian. var. hist., lib. ix. cap. 33.]
[u] [Justin. hist., lib. xv. cap. 3.]
[x] [lib. xxvii. cap. 34.]
[y] Bell. Jugurth. [cap. 3.]
[z] Lib. i. epist. fam. [ad divers., epist. 8.]

Athens almost doating with age, he despaired of prevailing upon them by persuasion; but yet to compel them by force he concluded to be impious.' But can any man lose by patience? hath it no reward? or is there no degrees of counsel in it? that is, is not some patience acceptable though it be not necessary? shall it have no reward, if it be more than we are bound to? If it shall be rewarded, though it be greater than is simply necessary, then it is certain, that whatever we suffer under evil princes, to be quiet and peaceable is infinitely better than to resist: for that shall have a good reward; this seldom misses an ill one. But if there be no counsel, no degree of uncommanded patience, then all patience is necessary; for it is certain none is sin: for Christ was glorified by suffering the greatest injuries, and His martyrs have trodden the same way of the cross; and so must we if God calls us to it, if we will be His disciples.

§ 17. 4) But again I consider, does every subject that is a wicked man forfeit the right in his estate, otherwise than law appoints? is dominion founded in grace? or is it founded in law and labour, in succession and purchase? And is it not so in princes? with this only difference, that their rights of government are derived from God immediately; for none but He can give a power of life and death: can therefore any one take away what they did not give? or can a supreme prince lose it by vice, who did not get it by virtue, but by gift from God? If a law were made to devest the prince of his power in case of ill government, then he were not the man I mean, he is not supreme but subordinate, and did rule precariously, that is, as long as his superior judges will give him leave. But for the supreme he is sacred and immured, just as the utmost orbs of heaven are uncircumscribed; not that they are positively infinite, but because there is nothing beyond them: so is the supreme magistrate, nothing is above him but God; and therefore in his case we may use the words of Livy, *Si quis adversus ea fecisset, nihil ultra quam improbe factum adjecit lex,* 'if he does any thing against reason and justice, there is no more to be said but that it was ill done.'

But if he does not do his duty, that's no warranty for me not to do mine; and if obedience and patience be a duty, then the one is as necessary, and the other is more necessary when he does not do what he ought. And after all, the supreme power in every christian republic hath no power to kill a subject without law, nor to spoil him of his goods. Therefore neither can a subject kill or exauthorate the supreme at all; for there is no law to do it: and if he be the supreme power, he is also lawgiver, and therefore will make no such law against himself; and if he did, he were neither wise nor just.

§ 18. Either then stop all pretences, or admit all. If you admit any case in which the subjects may fight against their prince, you must admit every case that he will pretend who is the judge of one.

But because government is by God appointed to remedy the intolerable evils of confusion, and the violence and tyranny of every strong villain, we must keep ourselves there; for if we take the sword, or the power, or the legislation, or the judicature, or the impunity from the supreme, we return to that state of evil from whence we were brought by government. For certain it is, all the personal mischiefs and injustices done by an evil prince are infinitely more tolerable than the disorders of a violent remedy against him. If there be not a *dernier resort*, or a last appeal fixed somewhere, mischiefs will be infinite: but the evils that come from that one place will soon be numbered, and easier suffered and cured.

§ 19. It were easy to add here the sentences of the wise heathen to this very purpose; for though religion speaks loudest in this article, yet nature herself is vocal enough: but I have remarked some already occasionally, to the same sense with that of Tacitus[a], *Imperatores bonos voto expetendos, qualescunque tolerandos:* so the wiser Romans at last had learnt their duty. The same also was the sentence of the Greeks;

Τὰς τῶν κρατούντων ἀμαθίας φέρειν χρεών[b],

'We must patiently suffer the follies of our rulers.' So did the Persians,

——— quamvis crudelibus æque
Paretur dominis[c],

'Though the lords be cruel, yet you must obey them as well as the gentle.' But I am weary of so long telling a plain story. He that is not determined by these things, I suppose will desire to see no more. But if he does, he may please to see many more particulars in Barclay[d], in Grotius[e], in Monsieur de la Noüe[f], in Albericus Gentilis[g], in Scipio Gentilis[h], in bishop Bilson[i], in Petrus Gregorius[k], and Bodinus[l]. I conclude,—Many supreme princes have laid aside their kingdoms, and have exchanged them for honour and religion; and many subjects have laid aside their supreme princes or magistrates, and have exchanged them for liberty and justice. But the one got, and the other lost. They had real advantages; and these had words in present, and repentance in reversion.

[a] [Hist., lib. iv. cap. 8.]
[b] Eurip. [Phœniss. 393.]
[c] Claudian. [in Eutrop. lib. ii. 479.]
[d] [De regno et regali potestate, adversus Buchananum, Brutum, Boucherium, et reliquos monarchomachos, 4to. Par. 1600.]
[e] [De jure belli et pacis, lib. i. cap. 4.]
[f] [Discours politiques et militaires, vid. disc. 4. p. 97 sqq. ed. 8vo. Bas. 1587.]
[g] [De jure belli, 8vo. Hanov. 1612.]
[h] [De jurisdictione, 8vo. Franc. 1618.]
[i] ['The true difference between christian subjection and unchristian rebellion,' &c.—4to. Oxon. 1585.]
[k] [De republica, e. g., lib. viii. cap. 1. p. 242. fol. Lugd. 1609.]
[l] [De republica, lib. ii. cap. 5.]

RULE IV.

THE SUPREME CIVIL POWER IS ALSO SUPREME GOVERNOR OVER ALL PERSONS AND IN ALL CAUSES ECCLESIASTICAL.

§ 1. If this rule were not of great necessity for the conduct of conscience, as being a measure of determining all questions concerning the sanction of and obedience to all ecclesiastical laws, the duty of bishops and priests to their princes, the necessity of their paying tribute, and discharging the burdens and relieving the necessities of the republic, I should have been unwilling to have meddled with it; because it hath so fierce opposition from the bigots of two parties, the Guelphs and the Gibellines, from Rome and from Scotland, from S. Peter and S. Andrew, the papist and the presbyterian: and they have placed all their great interest and their greatest passions upon this question, and use not to be very kind to any man that shall at all oppose them.

§ 2. From the church of Rome we have many learned men, servants of the pope, who affirm that all government ecclesiastical belongs to him; that he only can make laws of religion, that in that he hath a compulsory over kings, who are his subjects, dependent upon him, by him to be commanded in matters of religion; to which all temporalities are so subordinate, that if not directly (as some of them say) yet indirectly, as most of them say, *in ordine ad spirituale bonum*, for the good of the church and of religion, he can dispose of them. The great defenders of this doctrine are Bellarmine[m] and Baronius[n], Harding[o] and Eudæmon Johannes[p], Fevardentius[q] and Mariana[r], Boucher[s] and Ficklerus[t], Alexander Carerius[u] and D. Marta[x], Doleman[y], and generally the jesuits, and all the canonists.

§ 3. On the other side, the presbytery pretends mightily to the sceptre of Jesus Christ, as the pope does to the keys of S. Peter, and they will have all kings submit to that; as there is all the reason

[m] De pontif. Rom., l. ii. c. 17. [tom. i. col. 780. sq.]

[n] Annal. eccles.

[o] Contra apol. eccl. Angl.

[p] Contr. episc. Eliens. [Parallelus Torti ac tortoris ejus L. Cistrensis, (i. e. Lancelot Andrewes, successively bishop of Chichester, Ely, and Winchester.) &c. 8vo. Col. Agr. 1611.]

[q] In comment. in Esther. [8vo. Col. Agr. 1595.]

[r] In theatr. [? De rege et regis institutione, e. g. lib. i. cap. 8.]

[s] De just. abdic. Henric. III. [8vo. Lugd. 1591.]

[t] De jure magistratuum. [Published anonymously in French at Magdeburg, A.D. 1550, under the title, 'Du droit des magistrats sur leurs sujets;' afterwards in 1574 in an enlarged form, and in Latin in 1589, with the 'Vindiciæ contra tyrannos' of Stephanus Junius Brutus Celta, to whom it is attributed by some authorities as well as to Ficklerus, or Hottoman;—see Placcius, theatr. pseudonym. ad voc.]

[u] De potestate papæ, lib. ii. [cap. 9. fol. 58. ed. 4to. Patav. 1599.]

[x] De temp[orali] et spirit[uali] pontif. potestate. [i. e. De jurisdictione, part. i. capp. 9—22, pp. 21. sqq. fol. Mogunt. 1609.]

[y] Of the broken succession. ['A conference about the next succession to the crown of England,' by R. Doleman (Robert Parsons). 8vo. n. p. 1594.]

in the world they should: but by this sceptre of Christ they mean their own classical meetings, and the government that themselves have set up the other day; to which the first inventor of it was at first forced pitifully to beg suffrages of allowance, and that it might be endured; but, as ill weeds use to do, it quickly grew up to that height, that like the bramble[z] it would be king, and all the birds and beasts must come under the shadow of it. The great masters of this invention after Calvin are Beza[a], Cartwright[b], Lambertus Danæus[c], Gellius Snecanus[d], Guil. Bucanus[e], Hermannus Rennecherus[f], Buchanan[g], Christopher Goodman[h], Brutus Celta[i], Francisc. Hottoman[k], the author of the book called *Speculum tyrannidis Philippi regis*, and the dialogues of Philadelphus[l]: and if any one would see more of these, he may find enough of them in the writings of that excellent and prudent prelate Dr. Bancroft archbishop of Canterbury.

§ 4. Concerning the pretences of the church of Rome, they are as invalid as can be wished. For although there are some overtures of scripture made, as *Tibi dabo claves*, and *Ecce duo gladii*, and *Pasce oves*, which are strange arguments to considering persons to prove the pope superior to kings, (and concerning them I shall not need to use any argument, but set down the words of the bishop of Maestricht in an excellent oration of his recorded by Aventine[m]: *Ambitiosi et superbi sunt qui illud Domini Deique nostri elogium, Quodcunque solveris super terram, &c. et quodcunque ligaveris . . erit ligatum, &c. perfricta fronte interpretando adulterant, suæ libidini servire cogunt, et nobis ceu pueris, et omnium rerum imperitis, astu illudere student:* they that expound such words of Christ to serve their pride or lust of empire are impudent, and think us to be fools and children, and fit to be cozened and fooled out of our senses:) yet these were made no use of to any such purpose for many ages after the apostles' death; and therefore upon wiser accounts they cause this great article to rely upon some prudential motives, and some great prece-

[z] [Judg. ix. 15.]

[a] De presbyterio. [In confess. fid. Christ., cap. 34. opp. tom. i. p. 47. fol. Gen. 1570.]

[b] In his last reply. ['The second replie of T. C. agaynst Dr. Whitgiftes second answer touching the churche discipline,' 4to. n. p. 1575; and 'The rest of the second replie,' 4to. n. p. 1577.]

[c] Christian. politia. [? Aphor. polit., passim.]

[d] Lib. disciplinæ. [Descript. method. loc. comm., p. 434 sqq. 8vo. Lugd. Bat. 1584.]

[e] Loci comm. theol. [siv. Institt. theol.]

[f] Observat. in Psal. i. [in vers. 1. p. 34.]

[g] De jure regni apud Scotos. [ad calc. tom. i. opp., 4to. Lugd. Bat. 1725.]

[h] Treatise of obedience, ['How superior powers ought to be obeyed of their subjects; and wherein they may lawfully by God's worde be disobeyed and resisted,'—12mo. Gen. 1558.]

[i] De jure magistratuum. [The same work as that attributed above to Ficklerus. The writer under the pseudonym of Stephanus Junius Brutus has been identified by various authorities with Beza, Fr. Hottoman, Du Plessis Mornay, and more plausibly, with Hubert Languet. See Placcius, theatr. anon., s. v. Brutus; Bayle, s. v. Languet.]

[k] Francogallia. [cap. 11.]

[l] Dial. ii. p. 65. [Eusebii Philadelphi (i. e. Bernaudi Delphinatis, teste Placcio, theatr. pseudon., ex symb. Normann.), dialogi duo de vita Car. ix. reg. Gall. 12mo. Edinb. 1574.]

[m] Lib. v. annal. Boior. [cap. 15. § 14. p. 557.]

dents and examples. The particulars I shall consider in the following numbers: but that which here lies in my way is their great boast of the fact of pope Zachary deposing Childeric king of France in the year DCCL, and appointing Pepin the king's marshal to be king in his room. Upon the warranty of this example Gregory the seventh[o] endeavoured to justify his proceedings against the emperor Henry the fourth. Bellarmine will not endure with patience to hear that any one did this feat but the pope only; and on all hands they contend mightily that it was he, and not the nobles and people of France. They indeed were willing, but they had no authority, therefore they appealed to him as the ordinary judge; and he declared for Pepin, and God declared for that judgment that it was according to His will: for the event was blessed, Pepin was prosperous, and his son Charles the great grew a mighty prince, and France a potent empire, and religion and the church had great increment and more advantages than before or since.

§ 5. But when men judge of actions by the events, they only shew themselves willing to be cozened by prosperity, and that they will endure nothing that hath affliction with it; but so they become advocates for the greatest villanies, because they could never come to their greatness if they were unprosperous. And therefore there is no judging of lawful or unlawful by the event, till the last event be tried: and at the day of our death and at the day of judgment, the event of things is the best argument and the best trial of right and wrong. But besides this, the folly of these men is infinitely seen in this very instance. For it is no wonder that the church of Rome was prosperous and did thrive upon that change: Pepin and pope Zachary helped one another and divided the spoil; and Pepin and Charles having no warranty and reputation in that treasonable surprise of the crown of France, but what they had from the opinion the world then had of the bishop of Rome, it concerned Charles to advance the papacy, that the papacy might support him. But "by all that is before him in this world, a man knows not whether he be worthy of love or hatred," saith Solomon[p]; and a man's fortune is seen in his children: and therefore if the pope's servants would look a little further than their own advantages, they might have considered what is observed by Paulus Æmilius and Beneventus of Imola, that in the days of Charles the great, who was son to Pepin, the empire was divided (which was the curse in which God punished Solomon in the person of Rehoboam); that his son Ludovicus Pius was served just as his grandfather served his master the king, for his son Lotharius did most unnaturally rebel against him, deposed him and thrust him into a cloister; and that he himself felt the judgment of God, for himself also was deposed, and succeeded to by Lewis the second, who was prosperous in nothing, but in every undertaking the wind blew in his

[o] Epist. ad Herimannum epis. Metens. [lib. iv. epist. 2. inter concill. Harduin., tom. vi. col. 1245.]

[p] [Eccles. ix. 9.]

face. His son was Ludovicus *nihili*, so they called him; a cypher of a king, and stood for nothing. He indeed left an heir to the crown: but he also was a man that had no heart, and his son had no head; for Charles the bald was an extreme pitiful coward, and Charles *le gros* was a fool. After these succeeded Arnulph, who was eaten up with lice, the sad disease of Herod; and in his son Lewis the fourth that race was quite extinguished. And now if we judge of things by the event, have we not great reason even upon this account to suspect the fact of Zachary (though it was not his authority, but his consent and his confederacy with the rebel) to be extremely displeasing to almighty God, when there was not one of his line but went away with a share of the divine anger. But such reasonings as these concern none but them who feel them; they may suspect the thing, and better examine their confidences when they feel any extraordinary evils, which most commonly are the consequents of a great sin and a mighty displeasure: but others are to do as they should have done at first, go by rule, and not venture upon the thing to see what will become of it. Being now quit of this by which they have made so much noise, all their other little arguments will soon melt away when they come to be handled.

§ 6. But as for the other pretenders (viz. those of the presbytery) to a power superior to kings in ecclesiastical government; they have not yet proved themselves to have received from Christ any power at all to govern in His church; and therefore much less by virtue of any such power to rule over kings. I do therefore suppose these gentlemen not much concerned in this question, because they are uncapable of making claim; not only because religion is no pretence to regalities, and that spiritual power is of a nature wholly different from the power of kings, but because if the spiritual were to be above the temporal, yet even then they are not the better. For they have not only none of that spiritual power which can pretend to government, but it does not yet appear that they have any at all: and this relies upon the infinite demonstrations of episcopal government and power; which being one of the words and works of Christ, must needs be as firm as heaven and earth. But if they be concerned, they will be concluded.

§ 7. 1) And first in general, it is necessary that the supreme power of kings or states should be governors in religion, or else they are but half kings at the best[q], for the affairs of religion are one half of the interest of mankind: and therefore the laws of the twelve tables made provision for religion as well as for the public interest.

[q] Cum jus conferendi opima sacerdotia ab Henrico imp. vi fuerat extortum, ea res (inquit Paulus Æmilius lib. v.) multum virium imperatoriæ majestati detraxit in animis popularium, plus enim quam dimidium suæ jurisdictionis perdidit. [vid. de reb. gest. Franc., p. 141. ed. fol. Bas. 1601.]

Jus triplex, tabulæ quod ter sanxere quaternæ
Sacrum, privatum, et populi commune quod usquam est[r].

And this is so naturally and unalterably entailed upon the supreme power, that when Attalus the king of the Pergamenians made the people of Rome his heir with these words only, *Populus Rom. bonorum meorum hæres esto*, 'let the people of Rome be heir of all my goods;' by his 'goods' they understood *divina humanaque, publica et privata*, saith Eutropius[s] and Florus[t], 'all power in things public and private, human and divine.' For since religion is that great entercourse between God and us, it is impossible to deny to him who stands next to God the care of that by which we approach nearest to Him; and this I learned from Justin[u], *Jure ille a Diis proximus habetur per quem Deorum majestas vindicatur*, 'he is rightly placed next under God, by whom the majesty of God is asserted.' And therefore the Christians must alter their style, and no more say that the prince is *homo a Deo secundus, et solo Deo minor*, which are the words of Tertullian[v], 'next to God, and only less than Him,' if between God and the prince there is all that great distance and interval of the government of religion. He is the best and greatest person that rules the best and greatest interest: and it was rightly observed of S. Paul[x] concerning controversies civil, for money or land, "Set them to judge who are least esteemed amongst you;" for that is of the least concern: but he that is judge of life and death, that is, the governor of bodies, and he that governs the greatest affairs of souls, he indeed ought to be of highest estimation. Bishops and priests are the great ministers of religion, but kings are the ἀρχηγοὶ, the great rulers and governors of it. And this is easy to distinguish. For as the king's judges and counsel learned in the law minister law to the people, yet the king is the supreme judge in law; and the king's captains and soldiers fight his battles, and yet he is *summus imperator*, and the power of the militia is his: so it is in religion, it must be ministered by persons ordained to the service, but governed by himself; he is not supreme unless he have all the power of government.

§ 8. 2) The care of religion must needs belong to the supreme magistrate, because religion is the great instrument of political happiness: *Ad magnas reip. utilitates retinetur religio in civitatibus*, saith Cicero[y]; and unless he have power to manage and conduct it, and to take care it be rightly ordered, the supreme power hath not sufficient to defend his charges. If the prince cannot conduct his religion, he is a supreme prince just as if he had not the militia; or as if he were judge of right but not of wrong; or as if he could reward but not punish; or as if he had cognisance but of one half of

[r] Auson. [idyll. 336. 61.]
[s] Eutrop., lib. iv. [cap. 3.]
[t] L. Flor. hist., lib. ii. [cap. 20.]
[u] Hist., lib. viii. [cap. 2.]
[v] [Ad Scap., cap. 2. p. 69 C.]
[x] [1 Cor. 6. 4.]
[y] Lib. ii. de divinat. [cap. 33.]

the causes of his people; or as if he could rule at land but not at sea, or by night but not by day. But how if an enemy comes with a fleet against him, will he send a brigade of horse to take a squadron of ships? The case is just the same; for if God breaks in upon a nation for the evil administration of religion, how shall the prince defend his people, or answer to God for them? And this is no inconsiderable necessity: for besides that justice and charity, and temperance and chastity, and doing good and avoiding evil, are parts of religion, and yet great material parts of government and the laws, the experience of mankind and natural reason teaches us that nothing is so great a security or ruin to a state as the well or ill administration of religion.

Dii multa neglecti dederunt
Hesperiæ mala luctuosæ[a]:

and Cicero[a], *Omnia prospera eveniunt colentibus deos, adversa spernentibus*, 'the people that have care of religion are prosperous, but unhappy when they are irreligious.'

Συνέχει δῶμα,

saith Euripides[b]; and

Καλὸν δ' ἄγαλμα πόλεσιν εὐσεβὴς πόνος.

Religion is the band of families, and a strong foundation to commonwealths. Τὸ συνεκτικὸν ἁπάσης κοινωνίας, καὶ νομοθεσίας ἔρεισμα, so Plutarch[d]; it is 'the ligature of all communities, and the firmament of laws;' the same with that of Synesius[e], Εὐσέβεια πρῶτον ὑποβεβλήσθω κρηπὶς ἀσφαλὴς, ἐφ' ἧς ἐστήξει τὸ ἄγαλμα ἔμπεδον τῆς βασιλείας, 'first let religion be settled, because it is the strong base and column upon which a kingdom does rely.' And of this we have God himself a witness: "Seek the kingdom of heaven and the righteousness thereof in the first place, and all these things," that is, the necessaries of the world and of this life, "shall be added." For so saith the apostle, "Piety is profitable to all things, having the promise of the life that now is, and of that which is to come." And to this that of Homer[f] rarely accords.

Ὥστέ τεν ἢ βασιλῆος ἀμύμονος, ὅστε θεουδὴς
Ἀνδράσιν ἐν πολλοῖσι καὶ ἰφθίμοισιν ἀνάσσων
Εὐδικίας ἀνέχησι, φέρησι δὲ γαῖα μέλαινα
Πυροὺς καὶ κριθάς, βρίθησι δὲ δένδρεα καρπῷ.
Τίκτει δ' ἔμπεδα μῆλα· θάλασσα δὲ παρέχει ἰχθῦς
Ἐξ εὐηγεσίης· ἀρετῶσι δὲ λαοὶ ὑπ' αὐτοῦ.

The sense of which is well enough rendered by that of Justinian[g], οὗπερ ἐν εἰρήνῃ φυλαττομένου, καὶ τὸ λοιπὸν ἡμῖν εὐθηνήσει πολί-

[a] Horat. [lib. iii. od. 6. 7.]
[a] Orat. v. in Verrem. [Lege Liv. hist., lib. v. cap. 51.]
[b] In Bacchis. [391.]
[c] In Supplic. [373.]
[d] [Advers. Colot., tom. x. p. 626.]
[e] [De regno, p. 9 D.]
[f] [Odyss. τ. 109.]
[g] Novel. 42. [Authent. coll. iv. tit. 21. cap. 3. § 3.]

τευμα, that he would take care concerning ecclesiastical government or the affairs of religion; 'for if this be kept in peace, all the whole republic will be prosperously administered.' *Reliqua nobis exuberabit politia;*' so it is rendered by one of our Saxon kings,—the very trees will bring their fruit in due season, and the sea will give her fish, and the earth shall give her increase, when kings take care of justice and religion. By religion princes increase their empire[h]. So Cicero[i] affirms of the Romans, *non calliditate ac robore, .. sed pietate ac religione omnes gentes nationesque superavisse,* 'they overcame all the nations not by force or craft, but by piety and religion.' To which purpose is that of Valerius Maximus[k], *Non dubitaverunt sacris imperia servire: ita se rerum humanarum futura regimen existimantia si divinæ potentiæ bene atque constanter essent famulata,* 'the greatest empires made no scruple of ministering to religion, as believing that then they should most prosperously prevail in the governments of the world, if they well and constantly did service to the divine almighty power.' Now this is not to be understood as if it meant that if a king were a good man and personally religious it would procure blessings for him and his people; though that be true in some proportion of events: but it signifies that they should be religious kings, that is, as such take care to defend, to promote, to conduct and to govern it to advantages and for the honour of God. And this observation is made by S. Austin in his epistle to Bonifacius[l]:—'How do kings serve the Lord in fear, but by forbidding and by a religious severity punishing those things which are done against the Lord's commandments? for otherwise does he serve Him as a man, otherwise as a king. As a man he serves Him by living faithfully: but as a king he serves Him by establishing laws, commanding righteousness, and forbidding the contrary. So did Hezekiah serve God by destroying the groves and the idol temples, and all those things which were built against the commands of God. In the like manner king Josiah did serve God; and the king of Nineveh served Him by compelling all the city to serve the Lord. Thus king Darius served God by delivering the idol to Daniel to be broken, and casting his enemies into the lions' den: and Nebuchadnezzar served Him by forbidding by a terrible law all his subjects to blaspheme. For in this kings serve the Lord as kings, when they do those things for His service which they cannot do but as kings.' Now if religion be the great interest, the preserver, the enlarger of kingdoms, it ought to be governed by the hands of these whose office it is to enlarge or to preserve them. For if the instrument be conducted by other hands, the event shall depend upon them, and then they, not kings, shall be answerable for the felicity or infelicity

[h] Eorum imperiis remp. amplificatam qui religionibus paruissent,—dixit Cicero, de nat. deor., lib. ii. [cap. 3.]

[i] Orat. de arusp. resp. [cap. 9.]

[k] [lib. i. cap. 1. § 9.]

[l] [Epist. clxxxv. cap. 5. tom. ii. col. 651.]

of their nations. And it was rarely well said of Plutarch[m], that 'a city might be as well built in the air, without earth to stand upon,' ἢ πολιτεία, τῆς περὶ θεῶν δόξης ἀναιρεθείσης, παντάπασι σύστασιν λαβεῖν, ἢ λαβοῦσα τηρῆσαι, 'as a republic can either be constituted or preserved without the support of religion.' That supreme power therefore that hath no government of religion is defective in a necessary part of its life and constitution.

§ 9. 3) The supremacy and conduct of religion is necessary to the supreme power, because without it he cannot in many cases govern his people. For besides that religion is the greatest band of laws, and conscience is the greatest endearment of obedience[n], and a security for princes in closets and retirements, and his best guard against treasons; it is also that by which the common people can be carried to any great or good or evil design. And therefore Livy observes of Numa, that to establish his government he first settled religion, as supposing that nothing is more powerful to lead the people gently, or to drive them furiously, than to imprint in them the fear of God, or to scare them with religion. And therefore the prince cannot rule without it: he is but the shadow of a king, and the servant of his priests; and if they rule religion, they may also rule him. And that for two great causes.

§ 10. 1) Because the propositions and opinions of religion have and are directly intended to have great influence upon the whole life and all the actions of mankind. For how if the ministers of religion preach the stoical 'fate,' and that all things that come to pass are unalterably predetermined, who need to care how he serves God, or how he serves his prince? Suetonius says of Tiberius[o], that he was *religionis negligentior, quippe persuasionis plenus cuncta fato agi*, 'careless of religion, because he was fully persuaded that all things came by destiny.' To what purpose are laws or punishments, rewards and dignities, prisons and axes, rods and lictors, when it is injustice to punish a criminal for being unavoidably miserable? and then all government is at an end when there can be no virtue nor vice, no justice nor injustice: for what is alike necessary, is equally just. But upon some such account as this Plato said that they are not to be suffered in a commonwealth who said that God is the author of evil. And what are likely to be the effects of that persuasion which is a great ingredient in the religion of some men, that dominion is founded in grace; that evil princes may be deposed;

[m] Contra Colot. [tom. x. p. 626.]

[n] Solo sacramento inclyti principes tuti sunt.—Symmach., lib. x. [ep. 54.] Maximum, dicente Catone, majoribus nostris telum, ex quo plures pace susceptæ quam bello gentes fuere devictæ, quo solo continetur omnis societas, et dissoluto dissolvitur.—Appius, lib. vi. in fin.

Omnium primum, rem ad multitudinem imperitam, et illis seculis rudem efficacissimam, deorum metum injiciendum ratus est.—Livius lib. i. [cap. 19.]

Primum enim militiæ vinculum est religio, et signorum amor, et deserendi nefas.—Senec. epist. xcv. [tom. ii. p. 465.]

[o] [vid. cap. 69.]

that heretics may be excommunicated, and their subjects absolved from the oath of their allegiance; that faith is not to be kept with heretics; that it is lawful to tell a lie before a magistrate, provided we think up the truth; that kings are but executioners of the decrees of the presbytery; that all things ought to be in common?—By such propositions as these it is easy to overthrow the state of any commonwealth; and how shall the prince help himself, if he have not power to forbid these and the like dangerous doctrines? A commonwealth framed well by laws and a wise administration can by any one of these be framed anew and overturned. It is therefore necessary that the prince hold one end of this staff, lest himself be smitten on the head.

§ 11. 2). The other great cause is this, because religion hath great influence upon persons as well as actions; and if a false religion be set on foot, a religion that does not come from God, a religion that only pretends God, but fears Him not, they that conduct it can lead on the people to the most desperate villanies and machinations. We read in the life of Henry the third of England[p] that when he had promised any thing to his nobility that he had no mind to perform, he would presently send to the pope for a bull of dispensation, and supposed himself acquitted: and who could suffer such a religion that destroyed the being of contracts and societies, or bear the evils consequent to such a religion? And of the same nature, but something worse in the instance, is that which Arnaldus Ferronius[q] tells of, that the Roman lawyers answered to Ferdinandus Davalus, that at the command of the pope he might take up arms against the emperor Charles the fifth, his prince, without any guilt of treason. And it was very much worse which was done and said by the pope John the twenty-second, against the emperor Lewis the fourth[r],—*Quod si nobis obtemperare detrectaverit, patriarchis, episcopis, cunctis sacerdotibus, principibus, civitatibus imperamus ut eundem deserant, ac nobis parere cogant,* 'patriarchs and princes, bishops and priests were not only allowed, but commanded to forsake their emperor, and to compel him to obey the bishop of Rome.' By these and much more it appears the evil ministers of a false religion have great powers of doing what they please:

> Nam faciunt animos humiles formidine divum,
> Depressosque premunt ad terram;———

They make the people absolute slaves, and lift them up again with boldness to do mischief. Εὐάλωτον εἰς δεισιδαιμονίαν τὸ βαρβαρικὸν, said Plutarch[s], 'the rude people are easy and apt to superstition:' and when they are in, they are ready for any violence. *Su-*

[p] Matth. Westmonast. in Henr. III. [A.D. 1261. p. 378. ed. fol. Franc. 1601.]
[q] Lib. viii. rerum gallicar. [p. 162. ed. fol. Bas. 1601.]
[r] Aventin. annal., lib. vii. [cap. 16. § 8. p. 725. ed. fol. Lips. 1710.]
[s] In Sertorio. [tom. iii. p. 526.]

perstitione qui est imbutus quietus esse non potest, said Cicero[t]: 'they cannot be quiet when they have got a wild proposition by the end.' And this is too much verified by the histories of almost all nations, for there is none but hath smarted deeply by the factions and hypocrisies of religion. The priests of Jupiter in the island of Meroe did often send the people to kill their kings. Eunus[u] a Roman slave armed sixty thousand men upon pretence of a religious ecstasy and inspiration. Maricus in France did the like: so did an Egyptian in the time of Claudius the emperor, mentioned by Josephus[v], who led after him thirty thousand men against the Romans. The two false Christs, the one in the time of Vespasian, the other under Hadrian, prevailed to the extreme ruin of their miserable countrymen. Leo and the Turkish annals tell us strange events and overthrows of government brought to pass by the arts of religion in the hands of Elmahel and Chemin Mennal in Africa: the first taking the kingdom of Morocco from Abraham their king, together with his life; the other forcing the king of Fesse to yield unto him the kingdom of Temesna. In Asia Shacoculis of the Persian sect by his religion armed great numbers of men, and in three great battles overthrew the Turkish power, and put to hazard all their empire.

§ 12. They that knew none of these stories did know others like them, and at least knew the force of religion to effect what changes pleased them who had the conduct of it; and therefore all wise princes, ancient and modern, took care to prevent the evil by such remedies and arts of government as were in their hands. Three remedies were found out, two by men and one by God.

§ 13. 1) The ancient governments of the world kept themselves and their people to the religion of their nation, that which did comply with their government, that which they were sure would cause no disturbance, as being that which was a part of the government, was bred up with it, and was her younger sister; but of foreign rites[x] and strange and new religions they were infinitely impatient: by the prohibition and exclusion of which by their civil laws, as the supreme power secured the interest and peace of the republic, so it gave demonstration that the civil power was supreme also in the religion. Upon this account we find that Aristotle and Anaxagoras were accused; Socrates and Protagoras were condemned for holding opinions and teaching contrary to the religion of their country; and it was usual with the Athenians so to proceed: so Josephus[y] writes of them, ὥστε καὶ τοὺς ῥῆμα μόνον παρὰ τὰς ἐκείνων νόμους φθεγξαμένους περὶ θεῶν ἀπαραιτήτως κολάζειν, 'they did severely punish any man that spake but a word against the religion established by law.' The Scythians also put Anacharsis to death for celebrating

[t] [De fin., lib. i. cap. 10.]
[u] Diod. Sicul., lib. vi. c. 10. [lib. xxxiv. cap. 1.] Florus, lib. iii. [cap. 19.]
[v] Lib. ii. de bello Judaic., cap. 13. [p. 1075.]
[x] ['rights' edd.]
[y] Lib. ii. contr. Appion. [p. 1387.]

the feast of Bacchus by the Grecian rites[z]. For these nations accounted their country gods to be entertained and endeared by their country religion, and that they were displeased with any new ceremonies. But this thing was most remarkable in the state of Rome. For this was one of the charges which they gave to the ædiles[a], *Ne qui nisi Romani Dii neque alio more quam patrio colerentur.* And Marcus Æmilius recited a decree to this purpose, *Ne quis in publico sacrove loco novo aut externo ritu sacrificaret.* And this they made a solemn business of, saith Livy[b], *quotiès patrum avorumque ætate negotium magistratibus datum est ut sacra externa fieri vetarent,* 'in the days of our ancestors they often made laws forbidding any stranger rites;' but commanded that only their own country gods should be worshipped, and that after their country manner. For this was enjoined in the laws of the twelve tables, *Nemo separatim Deos habessit*[c]; no man must have a religion of his own, but that which is appointed by laws. And upon this stock Claudius banished the Jews from Rome, and quite extinguished the superstition of the Druids, which Augustus Cæsar had so often prohibited. But most full to this purpose is the narrative which Dio[d] makes of the counsel which Mæcenas gave to young Octavian, τὸ μὲν θεῖον πάντη πάντως αὐτός τε σέβου κατὰ τὰ πάτρια, καὶ τοὺς ἄλλους τιμᾷν ἀνάγκαζε· τοὺς δὲ δὴ ξενίζοντάς τι περὶ αὐτὸ μίσει καὶ κόλαζε, . . ὅτι καινά τινα δαιμόνια οἱ τοιοῦτοι ἀντεισφέροντες πολλοὺς ἀναπείθουσιν ἀλλοτριονομεῖν· κἀκ τούτου καὶ συνωμοσίαι καὶ συστάσεις ἑταιρεῖαί τε γίγνονται, 'worship God always and every where according to your country customs, and compel others so to do: but hate and punish the bringers in of strange religions; because they who bring in new deities and forms of worship, they persuade men to receive other laws, and make leagues, covenants, factions and confederacies.'

§ 14. And therefore to prevent innovations in religion the Romans often enquired after those who had books of strange religions, and when they found any they burned them; as we find in Livy[e] and Suetonius[f]. They would not suffer the rites of religion to be publicly disputed; and Augustus would not have the causes of the rites of Ceres heard in open court. And when Ptolemy of Egypt was pressed to hear the controversy between the Jews and the Samaritans concerning the antiquity of their religion, he would not admit any such dispute, till the advocates would undertake their cause to be just upon the pain of death, so that they who were overcome in the cause should die for it; and that they should use no arguments but those which were taken from the received laws of their country, the law of Moses: they did so, and the advocates of the Samaritan party being

[z] [Herod. Melpom., cap. 76.]
[a] Liv., lib. xv. [lege lib. iv. cap. 30.]
[b] Lib. xxxix. [cap. 16.]
[c] [Cic., de leg., lib. ii. cap. 8.]
[d] [Hist. Rom., lib. lii. cap. 36.]
[e] Lib. v. dec. 3. [lege lib. xxxix. cap. 16.] et lib. x. dec. 4. [cap. 29.]
[f] In Augusto. [cap. 31.]

overcome were put to death[g]. For they knew that to introduce a new religion with fierceness and zeal would cause disturbances and commotions in the commonwealth; and none are so sharp, so dangerous and intestine as those which are stirred by religion. *Pro aris et focis* is the greatest of all contentions; for their country religion and their country dwellings, 'for their altars and their hearths,' even old women and children will carry clubs and scalding water. This caution therefore was also observed by christian princes. Justinian[h] gave in charge to the proconsul of Palestine to prevent all popular tumults which from many causes use to disturb the province, *tum vero maxime ex diversitate religionum . . quandoquidem ut multos illic tumultus existere cernimus, neque leves horum eventus:* 'but especially those that proceed from diversities of religion; for this begets many tumults, and these usually sit very heavy upon the commonwealth;' the changes of religion being most commonly the most desperate paroxysms that can happen in a sickly state. Which Leontius bishop of Antioch expressed prettily by an emblem[i]; for stroking of his old white head, he said, 'When this snow is dissolved, a great deal of dirty weather would follow:' meaning, when the old religion should be questioned and discountenanced, the new religions would bring nothing but trouble and unquietness.

§ 15. This course of forbidding new religions is certainly very prudent, and infinitely just and pious. Not that it is lawful for a prince to persecute the religion of any other nation, or the private opinion of any one within his own; but that he suffer none to be superinduced to his own to the danger of peace and public tranquillity. The persuasions of religion are not to be compelled: but the disturbances by religion are to be restrained by the laws. And if any change upon just reason is to be made, let it be made by authority of the supreme: *ut respublica salva sit;* that he may take care that peace and blessings may not go away to give place to a new problem. When it is in the prince's hands he can make it to comply with the public laws, which he then does best of all when he makes it to become a law itself. But against the law no man is to be permitted to bring in new religions, excepting him only who can change the law, and secure the peace. Beyond this no compulsion is to be used in religion: προτρεπτικὴ γὰρ ἡ πᾶσα θεοσέβεια, ζωῆς τῆς νῦν καὶ τῆς μελλούσης ὄρεξιν ἐγγεννῶσα τῷ συγγενεῖ λογισμῷ, said S. Clemens Alexandrinus[j], 'all religion must enter by exhortation; for it is intended to beget a desire in our mind that is of the same cognation, a desire of the life that now is, and of that which is to come[k].' The same with that of Theodoricus king of the Romans, *Religionem imperare non possumus, quia nemo cogitur ut credat invitus:*

[g] Joseph., lib. xiii. antiq. Judaic., cap. 6. [al. 3. p. 563.]

[h] Novell. ciii. cap. 2. [Authent. coll. viii. tit. 4. cap. 2. fin.]

[i] [Sozom. H. E. iii. 20. ad fin.]

[j] Pædag., lib. i. cap. 1. [p. 98.]

[k] Apud Cassiodorum, lib. ii. variar. [ep. 27.]

and Theobaldus[j] writing to the emperor Justinian argued well, 'Since God himself is pleased to permit many religions, we dare not by force impose any one; for we remember to have read that we must sacrifice to God with a willing mind, not by the command of any one that compels.' And therefore the old Romans, the Greeks, the Scythians, although they would admit no new religion amongst their own people, would permit to every nation to retain their own; by this practice of theirs declaring that religion is not to be forced abroad, nor changed at home, but that it was by the supreme power of the republic to be conducted so as to comply with the interest of the commonwealth. This was the first remedy against the evils of religious pretences; which by being conducted in the hands of the civil power shews that to be supreme even in the questions of religion.

§ 16. 2) The power which was found out by men, is that they did take the priesthood into the hands of the supreme civil power; and then they were sure that all was safe. The Egyptians[k] chose their priests out of their schools of learning, and their kings out of their colleges of priests. The kings of Aritia, a place not far from Alba, were also priests of Diana[l]: the same is reported of the priests of Bellona, that they were the kings of Cappadocia, saith Hirtius[m]; and the priests of Pantheon were supreme judges of all causes, and conductors of all their wars[n]. The kings of Persia were always consecrated to be princes of the ceremonies, so was the king of Lacedæmon: and at this day the kings of Malabar are also brahmins or priests; and it was a law amongst the Romans, *Sacrorum omnium potestas sub regibus esto*, 'the power of religion and all holy things was to be under their kings:' and Virgil[o] ever brings in his prince Æneas as president of the sacrificial rites; and of something to the same purpose Ovid[p] makes mention,

> Utque ea nunc certa est, ita rex placare superna
> Numina lanigeræ conjuge debet ovis.

'The king with the sacrifice of a ram was to appease the gods.' So did Romulus and Numa; *Romulus auspiciis, Numa sacris constitutis fundamenta jecerunt Romanæ civitatis*, said Cicero[r]: they built Rome, and religion was the foundation of the city. And the same custom descended with the succeeding kings, as Dionysius Halicarnasseus[s] reports, Πρῶτον μὲν ἱερῶν καὶ θυσιῶν ἡγεμονίαν εἶχεν, καὶ πάντα δι' ἐκείνου πράττεσθαι τὰ πρὸς θεοὺς ὁσίους, 'they had the government of all sacrifices and holy rites, and whatsoever was to be done to the holy gods, was done by them.'

[j] [Theodehadus,—apud eund.] lib. x. [epist. 26.]
[k] Marsil. Ficin. in præfat. lib. Trismeg. [tom. ii. p. 789. fol. Par. 1641, ex Platone.]
[l] Strabo lib. v. tom. i. p. 366. fol. Amst. 1707.]
[m] In bell. Alexandr. [cap. 66.]
[n] Diod. Sicul., l. vi. c. 1. [?]
[o] Lib. x. Æneid. [lib. v. 76, viii. 35.]
[p] Fastor. [lib. i. 333.]
[q] ['sacrorum.']
[r] Lib. iii. de nat. deor. [cap. 2.]
[s] [Hist. Rom., lib. ii. cap. 14.]

§ 17. When afterwards they separated the priesthood from the civil power, they appointed a sacrificing king to take care of the rites, but they kept him from all intermeddling with civil affairs[t]; he might bear no office in the commonwealth, nor have any employment in the army, nor make an oration to the people, nor meddle with public affairs: and yet besides this caution, the supreme magistrate was *pontifex maximus*[u]; and although he did not usually handle the rites, yet when he pleased he made laws concerning the religion, and punished the augurs, and the vestal virgins, and was superior to the *rex sacrorum*, and the whole college of priests.

§ 18. But when the commonwealth was changed into monarchy, Augustus annexed the great pontificate to the imperial dignity, and it descended even to the christian emperors, who because it was an honorary title, and was nothing but a power of disposing religion, they at first refused it not: but upon this account it was that Tacitus[v] said of the Roman emperor, *nunc deum munere summum pontificem summum hominum esse*, 'the great priest is also the greatest prince.' Now this device of theirs would indeed do their business, but it was more than was needful. For though it were certain that religion in the hands of the supreme magistrate should never disturb the public; yet it might be as sure if the ministry were in other hands, and the empire and conduct of it in their own. And that was God's way.

§ 19. 3) For God hath entrusted kings with the care of the church, with the custody of both the tables of His law, with the defence of all the persons of His empire; and their charge is to preserve their people in all godliness and honesty, in peace and in tranquillity: and how this can be done without the supreme care and government of religion is not easy to be understood.

4) But this appears in that kings, that is, the supreme power of every nation, are vicegerents of Christ, who is 'Head of the church[w],' and 'Heir of all things[x];' 'He ruleth with a rod of iron[y];' 'He is Prince of the kings of the earth[z],' 'the only Potentate[a],' 'King of kings, and Lord of lords[b];' 'to Him is given all power in heaven and earth[c],' and 'by Him kings reign.' So S. Athanasius[d], λαμβάνων οὖν ὁ Χριστὸς τὸν θρόνον μετέστησεν αὐτὸν καὶ ἔδωκε τοῖς ἁγίοις Χριστιανῶν βασιλεῦσιν, ἐπαναστρέψαι τούτους ἐπὶ τὸν οἶκον Ἰακὼβ, 'Christ taking His throne hath translated it and given it to holy christian kings, to return them back to the house of Jacob.' The fathers of the council of Ariminum[e] writing to Constantius the

[t] Festus Pompeius, lib. xvii. [in voc. 'Sacrificulus rex.']—Dionys. Halic., lib. iv. [cap. 74.]
[u] A. Gell., lib. x. [cap. 15.] Liv., lib. ii. [cap. 2.]
[v] Annal., lib. iii. [cap. 58.]
[w] [Ephes. v. 23.]
[x] [Heb. i. 2.]
[y] [chap. xii. 5; xix. 15.]
[z] [Rev. i. 5.]
[a] [1 Tim. vi. 15.]
[b] [Rev. xi. 15, 7; xvii. 14; xix. 16.]
[c] [Matt. xxviii. 18.]
[d] Serm. de B. Virg. [tom. ii. p. 400 C.]
[e] [tom. i. col. 715.]

Arian emperor, say to him, that by Christ he had his empire given him; δι' οὗ (Χριστοῦ) σοὶ καὶ τὸ βασιλεύειν οὕτως ὑπῆρξεν ὡς καὶ τῆς καθ' ἡμᾶς οἰκουμένης κρατεῖν, 'by Him thou art appointed to reign over all the world.' And upon this account Liberius gave him this advice, μὴ μάχου πρὸς τὸν δεδωκότα σοι τὴν ἀρχὴν ταύτην· μὴ ἀντ' εὐχαριστίας ἀσεβήσῃς εἰς αὐτὸν, 'fight not against Him who hath given thee this empire; and instead of thanksgivings, pay Him not with dishonour.' For the prince being an Arian and denying the divinity of Christ, did dishonour the Prince of the kings of the earth, who had deserved better at his hands. The consequent of this consideration is this,—If Christ as the supreme King does rule His church, and in this kingdom hath deputed the kings of the earth, and His vicars they are, then they are immediately under Him in the government of Christ's church. For Christ in heaven is both King and Priest. As King He reigns over all the world for the glory of His Father and the good of His elect; as Priest He intercedes for all mankind, and particularly 'for them who shall be heirs of salvation[f].' Now in both these relations He hath on earth deputed certain persons to administer and to imitate His kingdom and priesthood respectively. For He governs all the world, but He does it by His angel ministers, and by kings His deputies. He officiates in His priesthood Himself, and in this He hath no deputy; for He intercedes for us continually; but He hath appointed an order of holy and consecrated persons to imitate the offices of this priesthood, to minister the blessings of it to the people, to represent the death of the cross, to preach pardon of sins to the penitent, to reconcile lapsed and returning sinners; that is, to minister to the people all the blessings which He by the office of priesthood procures in heaven for us. Now it is certain that He hath made deputies of His kingdom; for all power being given to Him as the great King, there can be no government upon earth but what He appoints: 'the government is upon His shoulders[g],' and all the earth is His inheritance, and therefore from Him all just government is derived. Now it being manifest that He is the fountain of all kingly power, it is also as manifest that all this power is delegated to the kings of the earth; for 'by Me kings reign,' saith the Wisdom of God[h], and it is one of His most glorious appellatives that He is 'Prince of the kings of the earth[i];' and it is as certain that none of this kingly power was given to the ministers of religion, but expressly denied to them. 'The kings of nations exercise dominion;' that's their province: 'but it shall not be so amongst you: but he that is greatest amongst you let him be your minister[k].' That's your state, you are ministers of the kingdom to other purposes, in other manners; you do your work by serving, by humility, by charity, by labours and compliance, by gentle treatments and the

[f] [Heb. i. 14.]
[g] [Isa. ix. 6.]
[h] [Prov. viii. 15.]
[i] [Rev. i. 5.]
[k] [Mark x. 42, 3; Luke xxii. 25, 26.]

gentlest exhortations; nothing of a king is to be in you, but the care: ὅτι συνάπτειν τὴν βασιλείαν[l] τῇ ἱερωσύνῃ συγκλώθειν ἐστὶ τὰ ἀσύγκλωστα[m], 'for to join the kingdom and the priesthood evangelical is to join in one band things of the most differing nature:' for the name of kings hath power and constraint, rods and axes; the name of priests and apostles hath in it nothing but gentle manners and holy ministries. Kings can compel, the ministers of religion must entreat: they can kill, but at the most these can but rebuke sharply. These can cut off from spiritual communion, and deny to give them mysteries that will hurt the wicked and the indisposed; but they can cut them off from life itself. Kings justly seek honours, wealth, and dignity, and it is allowed them by laws and by necessity, and by their reason: but priests must 'not seek their own, but only the things of Jesus Christ[n].' They must indeed be maintained; the ox cannot labour if his mouth be muzzled: but though this be his maintenance it must be no part of his reward. Our blessed Saviour's word is rendered by S. Matthew[o] by κατακυριεύειν. The kings of the people 'do rule imperiously.' This very word is also used by S. Peter[p], and forbidden to the elders of the church, and to it is opposed ποιμαίνειν, 'to feed the flock like shepherds.' The manner of κυριεύειν used by S. Paul[q], or κατακυριεύειν used by S. Matthew and S. Peter, 'the exercising dominion' is compulsion, and great riches: this is also forbidden to the clergy, they must not do any thing ἀναγκαστῶς, nor αἰσχροκερδῶς, not 'for profit to themselves,' not 'with violence or imposing necessity upon others.' The ministers of religion are very considerable in this kingdom of Christ, to promote and to advance it by holy preachings and holy ministrations: but it is true which was solemnly declared in Babylon to the prince of the captives, *officium ipsi non potestatem injungi, et ab eo die incipiendum ipsi servire omnibus;* their eminency is nothing but an eminency of service, it is the greatest ministry in the kingdom, but hath in it the least of empire. But of this I shall have occasion to give a fuller account. For the present, that which the present argument intends to persuade is, that the ministers of religion are only officers under Christ's priesthood, but subjects in His kingdom, which is administered by angels and christian princes in all the imperial, in the defensive and coactive parts and powers of it. The christian king or supreme magistrate can do every thing πλὴν μόνου τοῦ ἱερουργεῖν, as Comatenus said, 'only except the sacred ministries:' which is the same which was said by the famous bishop of Corduba, Hosius, in Athanasius[r]; *Neque igitur fas est nobis in terris imperium tenere, neque tu sacrorum et thymiamatum habes potestatem, imperator, hoc est jus adolendi.* The good bishop was speaking of the fact of Ozias, who though he had power

[l] [πολιτικὴν ἀρετὴν.]
[m] Synes. [epist. lvii. p. 198 C.]
[n] [Phil. ii. 21.]
[o] [Matt. xx. 25.]
[p] [Pet. v. 3.]
[q] [2 Cor. i. 24.]
[r] [Hist. Arian., cap. 44. tom. i. p. 371 B.]

over the priests, yet had nothing to do to meddle with the rites of priesthood: 'It is not lawful for us to meddle with empire or the rights of government; nor for thee, O emperor, with the rites of incense.' The sum is this,—If Christ by His kingly power governs His church, and christian kings are His deputies, then they also are the supreme under Christ of the whole government of the church.

§ 20. 5) So that now I shall not need to make use of the precedents of the Old testament, nor recite how David ordered the courses of the Levites, the use of the bow in the quire, the solemnities of public service, nor how Solomon put Abiathar from the high-priesthood, nor how Jehu, nor Hezekiah, nor Josiah reformed religion, pulled down idols, burnt the groves, destroyed the worship of Baal, reduced the religion of the God of Israel. This indeed is an excellent argument, because it was a time in which God gave His priests more secular eminency and external advantages than ever He did since, and also because Christ changed nothing in the kingdoms of the earth; He left them as He found them, only He intended to make them ministers and portions of His kingdom; and that they should live privately, and govern publicly, by His measures, that is, by the justice and mercy evangelical. But this argument I was the more willing to touch upon because the church of England much relies upon it in this question, and excommunicates those who deny the supreme civil power to have the same authority in causes ecclesiastical, which the pious kings of the Hebrews had over the synagogue[s]. But I find the ancient doctors of the church pressing much upon the former medium, that Christ hath specially intrusted His church to christian princes. For,

§ 21. 6) Christ shall call christian kings to account for souls. *Cognoscant principes sæculi Deo debere se rationem reddere propter ecclesiam quam a Christo tuendam suscipiunt: nam sive augeatur pax et disciplina ecclesiæ per fideles principes, sive solvatur, ille ab eis rationem exiget qui eorum potestati suam ecclesiam credidit,* said Isidore Hispalensis[t]: 'let the princes of the world know that they must give an account to God for the church which they have received from Christ into their protection: for whether the peace and discipline of the church be increased by faithful princes, or whether it be dissolved, He who hath intrusted His church to their power will exact an account from them.' And therefore pope Leo[u] to Leo the emperor gave this advertisement, *Debes incunctanter advertere regiam potestatem tibi non solum ad mundi regimen, sed maxime ad ecclesiæ præsidium esse collatam,* 'you must diligently remember that the supreme power is given to you not only for the government of the world, but especially for the safety and defence of the church.' Now this defence not being only the defence of guards, but of laws, not

[s] [Artic. xxxvii.]
[t] In sent. [lib. iii. cap. 51. tom. vi. p. 344.]
[u] Epist. lxxv. [p. 145 C.]

only of persons, but especially of religion, must needs infer that kings have something more to do in the church than the court of guards hath: he defends his subjects in the service of God; he defends and promotes this service; he is not to defend them if they disserve Christ, but to punish them, and of this he is judge and exactor: and therefore this defence declares his right and empire. *Ex quo imperatores facti sunt christiani res ecclesiæ ab ipsis dependisse*:—so Socrates[v] expresses this question: 'ever since the emperors became christian the affairs of the church have depended upon them.' They did so before, but they did not look after them: they had the power from Christ, but they wanted His grace; they owed duty to Him, but they paid it not, because they had no love for Him. And therefore Christ took what care He pleased, and supported it in persecution, and made it grow in despite of opposition: and when this He had done long enough to prove that the religion came from God, that it lost nothing by persecution, but that His servants loved Him and died for Him, then He called the princes into the house of Jacob, and taught them how to administer His power to the purposes of His own designment. Hence come those expressions used often by antiquity concerning kings, calling them *vicarios Dei, veræ religionis rectores,* εὐσεβείας καὶ πίστεως ἀρχηγοὺς, 'the deputies of God,' 'governors of true religion,' 'the captains and conductors of faith and godliness;' *ad quorum curam, de qua Deo rationem reddituri erant, res illa maxime pertinebat*[x], 'for to their care religion and the church did belong, and concerning that care they were to give an account to God.'

§ 22. Now if we descend to a consideration of the particular charges and offices of kings in relation to the church, it will not only be a mighty verification of the rule, but also will minister to the determination of many cases of conscience concerning kings and concerning the whole order ecclesiastical. This I shall do in the following rules, which are but appendices to this.

RULE V.

KINGS HAVE A LEGISLATIVE POWER IN THE AFFAIRS OF RELIGION AND THE CHURCH.

§ 1. THIS is expressly taught by S. Austin[y].—*In hoc reges sicut eis divinitus præcipitur Deo serviunt in quantum reges sunt, si in suo regno bona jubeant, mala prohibeant, non solum quæ pertinent*

[v] [Hist. eccles., lib. v. in procem.]
[x] S. August., epist. clxvi. [al. cv. cap. 2. tom. ii. coll. 298, 9.]
[y] Contr. Crescon., l. iii. c. 51. [tom. ix. col. 464 A.]

ad humanam societatem, verum etiam quæ pertinent ad divinam religionem; 'in this kings in that capacity serve God according to the divine commandment, if in their respective kingdoms they command good things and forbid evil, not only in relation to human society, but in order to religion.'

§ 2. The least part of this power is to permit the free exercise of it, and to remove all impediments, and to give it advantages of free assemblies, and competent maintenances and just rewards and public encouragements. So Cyrus and Darius gave leave and guards and rescripts, warranty and provisions and command to the Jews of the captivity to build the temple. So Constantine and Licinius did to the Christians to practise their religion. Thus Hezekiah and some other pious kings of the Hebrews took away the offences of the people, the brazen serpent, the groves and images, the altar of Bethel, and the idolatrous services. And of these things there is little question; for the christian princes by their authority shut up the temples of the heathen gods.

§ 3. That which is yet more considerable is, that by punishments they compel their subjects to serve God and keep His commandments. That which was observed of the primitive Christians[y], that they tied themselves by oaths and covenants to serve God, to do justice, not to commit adultery, to hurt no man by word or deed, to do good to every man they could, to assemble together to worship Christ; that christian princes are to secure by laws, that what men will not do by choice, they may whether they will or no; and this not only in things relating to public peace and the interest of the republic, but in the immediate matters of religion: such as are laws against swearing, against blasphemy, against drunkenness and fornication and the like, in which the interest of souls is concerned, but not the interest of public peace. *Hoc jubent imperatores quod jubet Christus;* and it is a great service to Christ that the fear of men be superadded; because to wicked persons and such for whom the severity of laws was made, it often prevails more than the fear of God.

§ 4. But that which is more than all this is, that besides those things in which God hath declared His will, the things of the church, which are directly under no commandment of God, are under the supreme power of christian princes. I need no other testimony for this but the laws themselves which they made, and to which bishops and priests were obedient, and professed that they ought to be so. And this we find in the instance of divers popes, who in their epistles gave command to their clergy to observe such laws which themselves had received from imperial edicts. For there are divers laws which are by Gratian thrust into his collection which were the laws of christian princes. The canon '*Judicantem,*' 31. q. 5[z], expressing the office of a judge in the cognizance of causes,

[y] [Plin., lib. ix. epist. 96.]

[z] [Gratian. decret., part. 2. caus. xxxi. quæst. 5. can. 11. col. 1717.]

attributed by Gratian to pope Eleutherius, was a law made by the emperor Constantine, *l.* 1, *C. de Judic. C. Theodos.*[a], and so was that which was attributed to pope Fabian against accusers, *can.* '*Si quis iratus*[b]:' it is in the Theodosian code[c] and was made by the same prince. The canons which go under the names of Sixtus[d] and Adrian[e] and Fabian[f] before cited of the same title were made by Gratian the son of Valentinian the elder: who also made the rescripts for restitution of church goods taken from bishops when they were forced from their sees, attributed to pope Caius and pope John. Theodosius the emperor made the canon '*Qui ratione*[g]' for order in accusations, which yet is attributed to pope Damasus, but is in the Theodosian code; for thus the popes easily became law-givers when they adopted into the canon the laws of their princes, which by their authority prevailed beyond the memory of their first makers. The canon '*Consanguineos*[h],' for separation of marriage within the prohibited degrees was not the pope's, but made by Theodosius, as it is thought, at the instance of S. Ambrose: and Valentinian made the canon '*Privilegia,*' for confirmation of the privileges of the church, which goes under the name of Anacletus[i]. I could reckon divers others, for indeed the volume of the Decrees is full of such constitutions which the christian emperors made, but they were either assumed by the popes or imputed to them. But that the popes as ecclesiastics had no authority to make laws of ecclesiastical affairs, but that the emperors had, was sufficiently acknowledged by pope Honorius[k].—*Imperator Justinianus decrevit ut canones patrum vim legum habere oporteat,* 'that the canons of the fathers became a law in the church was by the constitution of the emperor Justinian.' For that was all the end both of the labours of war and the counsels of peace, *ut verum Dei cultum orbis nostri plebs devota custodiat,* said Theodosius and Honorius in their letters to Marcellinus: 'that our people may devoutly follow the true worship of God.'

§ 5. Upon this account we find that Constantine, Anastasius, and Justinian made laws concerning the expense and rites of sepulture. Gratian, Valentinian, and Theodosius forbad dead corpses to be interred within the memorials of martyrs and apostles. Honorius appointed the number of deans in the metropolis, and the immunities of every church. Leo and Anthemius forbad alienation of church lands. But what should I instance in particulars? They that know not this are wholly strangers to the civil law, particularly the first book

[a] [lib. ii. tit. 18.]
[b] [Caus. ii. quæst. 3. can. 5. col. 687.]
[c] [lib. ix. tit. 1. l. 1.]
[d] 3. q. 6. c. 17, [col. 807.] et 2. q. 8. c. 4. [col. 773.]
[e] 2. q. 3. c. 3. [col. 685.]
[f] 3. q. 6. c. 1. [col. 799.]
[g] ['Qui accusare.'] caus. iii. quæst. 9. [can. 8. col. 819.]
[h] Caus. xxxv. quæst. 6. [can. 1. col. 2025.]
[i] Caus. xxv. quæst. 2. [can. 1. col. 1571.]
[k] C. 1. ext. de juram. calum. [decret. Greg. IX. lib. ii. tit. 7. cap. 1. col. 550 B.]

of the code, the authentics, the capitulars of the French princes, the laws of the Goths and Vandals, and indeed of all the christian princes of the world. But the first titles of the code, *De summa Trinitate et fide catholica, De sacrosanctis ecclesiis, De episcopis et clericis, De episcopali audientia, De hæreticis, Manichæis, Samaritis, De apostatis,* and divers other, are witnesses beyond exception. Now in this there is no exception of matter. For whatsoever is under government is also under the laws of princes: μηδὲν ἄβατόν ἐστιν εἰς ζήτησιν τῇ βασιλείᾳ, said Justinian[l]: 'nothing comes amiss to the prince,' every thing is under the royal cognizance. Constantine made laws concerning festivals, and appointed what labours might and what might not be done upon the Lord's day[m]; and so did Leo the emperor[n]. Valentinian the elder made a law that no clergyman should receive an inheritance by the will or gift of widows and orphans, unless they were of the kindred. S. Ambrose[o] complains heavily of the law, and so does S. Hierome[p], but confesses it was just, and procured by the avarice of some clergymen who under cover of religion made a prey of the widows. But this decree was sent to pope Damasus, and publicly read in the churches of Rome. And Honorius the emperor made a law concerning the election of the pope. Which two last instances I reckon to be very great, because at Rome now-a-days they are intolerable.

§ 6. But if all these laws were made by emperors only by force, against right and justice, and beyond their just power, then we are never the nearer for this argument: and that it is so, Baronius[q] is bold to affirm, who upon this title blames Justinian for meddling with the affairs of the church: for *Quid imperatori cum ecclesia,* 'what hath the emperor to do with the church?' we know who said it. And therefore a synod at Rome under Symmachus[r] abrogated a law made by Basilius a deputy of king Odoacer in an assembly of ecclesiastical persons, in the vacancy of the see apostolic, upon the death of Simplicius. Now the law was a good law, it forbad the alienation of the goods of the church; yet because it was a law made by a laic they thought fit to annul it.

§ 7. To these things I answer that it matters not what Baronius says against Justinian, for pope Hadrian the fourth[s], who is much more to be credited, commends him, and propounds him as a great example imitable by all princes: and it was not Justinian alone, but very many other princes both before and after Justinian: and therefore to ask 'What hath the emperor to do with the church?' might become Dona-

[l] Novel. cxxxiii. [authent. coll. ix. tit. 16. in præfat.]
[m] C. de feriis, l. 3. [lib. iii. tit. 12.] et Cod. Theod. de fer. [lib. ii. tit. 8.]
[n] Leo VI. [novel. 54.]
[o] Epist. xxxi. [al. xviii. tom. ii. col. 837.]
[p] Ad Nepotian. [epist. xxxiv. tom. iv. part. 2. col. 260, 1.]
[q] Tom. vii. A.D. 541. [p. 333.]
[r] [Concill. Harduin., tom. ii. col. 975 sqq.]
[s] Apud Radenon. [Radevic.] in Frider., lib. i. cap. 15. [ad calc. Otton. Fris., fol. 44 a. Argent. 1515.]

tus (whose saying it was, and whom S. Austin[t] confuted for saying so), but it becomes not any man that loves truth and order. As for the Roman synod under Symmachus, the matter was this: he would needs make himself head of a synod without the bishop, (for he was lately dead,) and made a law with an anathema for the sanction, and would have it pass not for the law of the prince, but for a law of the church; which because the ecclesiastics had no reason to accept for such, when it was not so, they did annul it: *talem legem viribus carere, nec posse inter ecclesiastica ullo modo censeri,* said Eulalius[u] the bishop of Syracuse in that synod. But that this makes nothing against the prince his power of making laws, appears by the great submission which even the bishops of Rome themselves made to the imperial laws, even when they liked them, and when they liked them not. I instanced before in Damasus causing the law of Valentinian against clergymen receiving inheritances from widows to be read in all the churches of Rome. Pope Boniface consented to the law which Honorius the emperor made about the election of the pope, and was so far from repudiating an ecclesiastical law made by the prince, that he entreated him to make it. But that which is most material to this enquiry is, the obedience of S. Gregory the great to Mauritius the emperor, who made a law that no soldier should turn monk without his leave. This S. Gregory[v] esteemed to be an impious law, he modestly admonished the emperor of the irreligion of it. But Maurice nevertheless commanded him to publish the law. The good bishop knew his duty, obeyed the prince, sent it up and down the empire, and gave this account of it: *Utrobique quæ debui exsolvi, qui imperatori obedientiam præbui, et pro Deo quod sensi minime tacui,* 'I have done both my duties, I have declared my mind for God, and have paid my duty and obedience to the emperor.' *Legibus tuis ipsi quoque parent religionis antistites,* said pope Gelasius[x] to Anastasius the emperor: 'even the bishops, the ministers of religion, obey thy laws.' Now this is not for decency only, and upon prudent considerations, but upon necessity and by the divine authority: *cognoscentes imperium tibi superna dispositione collatum,* as 'knowing that the empire is given to thee by God.' And therefore the great prelates of the church, when they desired a good law for the church's advantage should be made, they presently addressed themselves to the emperor, as to him who alone had the legislative power. I have already instanced in pope Boniface intreating Honorius to make a law concerning the election of the pope. Sergius also, patriarch of Constantinople, petitioned the emperor Heraclius to publish a pragmatic sanction that no man should be admitted into the clergy but into a dead place. These things are so

[t] Epist. clxvi. [al. cv. cap. 2. tom. ii. col. 300.]
[u] [cap. 2. col. 979 A.]
[v] Lib. i. ind. 11. ep. lxii. [al. lib. iii. epist. lxv. tom. ii. col. 675, 7.]
[x] Epist. x. [epist. iv. inter concill. Harduin., tom. ii. col. 893 E.]

plain, that I may justly use the words of the fathers of the sixth council of Toledo[y], speaking of Chintillanus their king, *Nefas est in dubium deducere ejus potestatem cui omnium gubernatio superno constat delegata judicio*, 'it is impiety to call in question his power to whom the government of all is certainly deputed by the divine judgment.' I therefore conclude this particular with the excellent words of cardinal Cusanus[z]:—'It becomes not any man to say that the most sacred emperors, who for the good of the republic did make many constitutions concerning the election of bishops, collation of benefices, observation of religions, did err. Nay, we have read that the pope of Rome hath entreated them that they would publish laws concerning divine worship, and for the public good, and against sinners of the clergy. And lest peradventure it be said that the strength of all these constitutions did depend upon the approbation of the authority apostolical or synodical (viz. of the pope or council), I will not insist upon this, although (let me say this) I have read and collected fourscore and six chapters of ecclesiastical rules of the ancient emperors, which were to no purpose to insert here, and many other of Charles the great and his successors, in which many dispositions or appointments are to be found concerning the pope of Rome and all patriarchs, and the consecration[a] of bishops and others; and yet I never read that ever any pope was asked to approve those laws, or if his approbation did intervene, that upon that account the laws did bind. But it is read that some popes of Rome have confessed that they had those imperial laws in veneration.' And this thing is so true and so publicly known, that the French embassadors openly told it in the council of Trent, that the kings of France, by the example of Constantine, Theodosius, Valentinian, Justinian, and other christian emperors, made many laws concerning holy things, and that these did not only not displease the Roman bishops, but they put many of them into their canons: that the chiefest authors of these laws, Charles the great and Lewis the ninth, they thought worthy to be canonized and declared saints, and that the bishops of France and the whole order ecclesiastical have piously ruled and governed the Gallican church by the prescript of those ecclesiastical laws which their kings had made.

[y] Can. xiv. [tom. iii. col. 606 B.]

[z] Cath. concord. [lib. iii.] cap. 40. [p 820.]

[a] ['conservation' edd.]

RULE VI.

THE SUPREME CIVIL POWER HATH A POWER OF COERCION OF EVERY PERSON IN THE WHOLE ORDER ECCLESIASTICAL.

§ 1. He that says all must be subject, need not instance in particulars, and say that Titius and Sempronius, and the village curate, and the bishop of the diocese must be subject. But yet because of the pretences of some, the fathers of the church have found it necessary to say, that even ecclesiastics must be subject; and that they are a part of the all. So S. Chrysostom[b] explicating the words of S. Paul, saith, 'But Paul gives us those reasons which command us of duty to obey the powers; shewing that these things are commanded to all, not to seculars only, but to priests and monks: which he shews in the very beginning, when he saith, Let every soul be subject to the supereminent powers; although thou beest an apostle, or an evangelist, or a prophet. For this obedience or subjection (be sure) will not destroy thy piety.' That S. Chrysostom here speaks of secular powers is evident in the whole homily, and it appears also in the words here reported; for he says that even an apostle must be subject, who because he hath no superior ecclesiastical must be subject (if at all) to the secular, or supreme civil power. And this place is so understood by Irenæus[c], *lib. i. cap.* 24, S. Basil. *in Constit. monast., cap.* 22[d], S. Ambrose[e] upon this place, and S. Austin, *lib. de Catech. rud., c.* 21[f], and *contra Parmen., l. i. c.* 7[g], who expressly derides those that expound the 'higher powers' of S. Paul by ecclesiastical honours.

§ 2. But this thing is evident by notoriety of fact. Theodoret[h] tells of Eusebius bishop of Samosata, that when the imperial edict of banishing him from his see, and sending him into Thrace, was brought by a messenger in the twilight, he charged him to say nothing, lest the people should tear the officer in pieces. But the bishop according to his custom went to evening prayer; and then with one servant, with a book and a pillow, went to the water side, took a boat and passed over to Zeugma. The people having soon missed their bishop, followed him, found him out, would fain have brought him back; but he refused, and told them it was the precept of the apostle, to be obedient to the higher powers; and upon that he rested, and they returned. And the same was the submission,

[b] Homil. xxiii. in epist. ad Rom. [tom. ix. p. 686.]
[c] [lib. v. cap. 24. p. 321.]
[d] [tom. ii. p. 570.]
[e] [tom. ii. append. col. 98 sq.]
[f] [tom. vi. col. 287.]
[g] [cap. 10. tom. ix. col. 21.]
[h] Hist., lib. iv. [cap. 14.]

and the same was the reason of S. Athanasius[i], as appears in his apology to Constantius the Arian emperor; and the same subjection was professed by Justin Martyr[k] to Antoninus the emperor, *Nos solum Deum adoramus, et vobis in rebus aliis læti inservimus, imperatores ac principes hominum profitentes,* 'we only worship God, in other things we cheerfully serve you, as professing you to be emperors and the princes of mankind.' *Ego quidem jussioni subjectus,* said S. Gregory to Mauritius[l], 'I am subject to command:' and then it is certain he was subject to punishment in case he disobeyed the command. *Ad hoc potestas super omnes homines dominorum meorum pietati cœlitus data est.* He had no more immunity than any man else, for from heaven a power is given to the prince over all men. The effect of this instance and these words of Gregory is acknowledged by Espencæus[m], *Gregorius Magnus agnoscebat imperatoribus concessum esse dominari sacerdotibus,* 'Gregory the great acknowledged that to the emperors it was granted to rule over the priests.' And the same was affirmed by pope Honorius[n], *Sancta ecclesia legum sæcularium non respuit famulatum, quæ æquitatis et justitiæ vestigia imitantur,* 'the holy church refuses not to obey secular laws that are equal and just.'

§ 3. But I undertook to evidence the truth of this rule by matter of fact and authentic precedents. Constantine[o] received the libels which the bishops at Nice had prepared one against another. He told them indeed that it was more fit for them to judge him, than he them, and therefore he burned the papers; but this signified nothing but that it was a shame to them whose office was to reprove all sinners, to accuse one another of crimes before their prince. But that this was nothing but a modest redargution of them appears, because he did upon their condemnation of Arius banish him, and recalled him without their absolution of him. He banished Eusebius and Theognis[p], whom the council had deposed, and took cognizance of the cause between Athanasius and the bishops his accusers[q]; that it might appear what he had said to the prelates at Nice was but a modest reproof or a civil compliment, for it was *protestatio contra factum:* if he said that, he said one thing and did another. His son Constantius caused Stephen bishop of Antioch to be convened in the palace upon the law *de vi publica,* and the *lex Cornelia de sicariis.* His lay judges heard him, found him guilty,

[i] Apolog. [tom. i. pp. 296, 7.]
[k] Apolog. i. [§ 17. p. 54 B.]
[l] Epist. ad Mauritium. [ubi supra.]
[m] Com. in Tit. [iii. digress. 10. p. 572 B.]
[n] De Privileg. c. 'Super specula.' [decret. Greg. IX. lib. v. tit. 33. cap. 28. col. 1677.] c. 'Innotuit,' de arbitr. [lib. i. tit. 43. cap. 12. col. 487.] C. 1. de Nov. oper. nunc. [lib. v. tit. 32. cap. i. col. 1648.] c. 'Constitutus,' de in integr. restitut. [lib. i. tit. 41. cap. 8. col. 471.] c. 'Authoritate,' de concess. præb. in 6. [lib. sext. decret., lib. iii. tit. 7. cap. 7. col. 459.]
[o] Vide Athan. de synod. [tom. i. p. 239.]—Socrat. l. i. c. 25. [et sqq.]—Sozom. l. ii. [cap. 27 sqq.]
[p] Theodor., lib. i. [cap. 20.]
[q] Id., ibid., [cap. 31.]—Athanas. apol. ii. [tom. i. p. 179 sqq.]

and commanded the bishops to depose him from his bishopric and expel him out of the church. His brother Constans[r] heard Narcissus of Cilicia, Marcus the Syrian, Theodore of Thrace, and Maris of Chalcedon, against Athanasius and Paul bishop of Constantinople. Valentinian[s] the emperor set a fine upon the head of Chronopius the bishop, and inflicted divers punishments upon the bishops Ursicinus, Ruffus, Ursus and Gaudentius for making schisms to the disturbance of the public peace. Gratian the emperor deposed Instantius, Salvianus and Priscillian from their bishoprics and banished them, and afterwards recalled them. Arcadius the emperor heard S. Chrysostom's[t] cause and banished him; and pope Innocent, who found fault because he gave wrong judgment, yet blamed him not for usurping of a right to judge him. Theodosius the younger imprisoned bishop Memnon and S. Cyril of Alexandria. Indeed the prince was misinformed by John of Antioch; but when by the great Ephesine council he was rightly instructed, he condemned John of Antioch, and afterwards released the two bishops at the great and passionate petition and importunity of the council of Ephesus[u]. And when Ibas bishop of Edessa had excommunicated some priests of his diocese, they appealed to the emperor, and were heard. Theodoric king of Italy received accusations against pope Symmachus[v], and sent Altinus a bishop to be the visitor of that see, and afterwards remitted the matter to a synod. Justinus[x] the emperor gave judgment upon Dorotheus bishop of Thessalonica for sedition and homicide. Justinian[y] banished Julian the bishop of Halicarnassus, Severus bishop of Antioch, Peter of Apamea and Zoaras a priest: but he also judged the cause of pope Silverius[z] for certain treasonable letters, and recalled him from banishment, but so that he should not be restored to his see unless he were found innocent of the accusation.

§ 4. I could reckon very many more instances to the same purpose, but these are as good as more; especially being but particulars of that power, and just consequence of that authority, which I have proved by the laws of God and the confessions of the church to be inherent in the supreme power. I sum up this with the words of Balsamo[a]; *Quia statutum est nullum per alium injuria afficiendum, ipse patriarcha ab imperatore, qui ecclesiæ habet potestatis scientiam, judicabitur forte ut sacrilegus, vel male de fide sentiens, vel alicujus criminis reus: hoc enim judicialiter actum vidimus diversis temporibus;* 'because it is commanded that one man should not injure another, the patriarch himself shall be judged of the emperor,

[r] Socrat., l. ii. [c. 18.]—Sozom., l. iii. [c. 10.]

[s] Quorum appell., Cod. Theod. [lib. xi. tit. 36. l. 20.]

[t] Socrat., lib. vi. [cap. 15.]

[u] Vestra pia genua protensis manibus attingimus.—[Concill., tom. i. col. 1597.]

[v] Anastas. biblioth. in Symmacho. [p. 44. ed. 4to. Mogunt. 1602.]

[x] Epist. Hormisdæ 56, 57. [epistt. 62, 3. inter concill., ed. Bin., tom. ii. p. 350.]

[y] Novel. 42. [Authent. coll. iv. tit. 21.] et ponitur in. concil. gen. v. act. 1. [al. act. 6, ed. Bin., tom. ii. p. 469.]

[z] Liberatus in Breviar. c. 22. [Galland. biblioth. patr., tom. xii. p. 156.]

[a] Ad can. 12. syn. Antiochi. [apud Bevereg. synodic., tom. i. p. 442. D.]

who hath cognizance over the power of the church, peradventure for sacrilege, or for heresy, or for the guilt of any other crime; for we have divers times seen such judicial processes.' And to the same purpose the seventh canon of the first council of Matiscon[b] subjects the clergy to the secular judge in the causes of theft, witchcraft, and murder; and the council of Toledo, which is cited *c.* '*Filiis*,' 16. *q.* 7[c], does the like in the matter of robbery or cozenage. For either clergymen are not subjects, or they are bound by the laws of their prince. If they be not subjects, how come they free? if they be subjects, where is their privilege? or is the spiritual calling of a nature so disparate and estranged from the commonwealth, that it is no part of it? or is it better than the secular? The questions are worthy enquiring after; but the decision of them will take off many prejudices from this great measure of conscience, concerning the fountain of human laws and judicatories.

§ 5. But upon a closer view of the particulars it will be found that the whole matter is a mistake; a false consequence drawn from a true estimate of religion. For all men grant that religion is the greatest excellency, that our souls are the biggest interest, that all our wealth is best employed when it is spent in God's service, that all things must yield to our duty to God: these are all very true, as every thing else is when it is truly understood; but what then? therefore the ministers of religion are to be preferred before the ministers of policy? Well, suppose that, for it is true that every thing is best in its own place and time. But what? therefore the ministers of religion are superior to princes, whose government and care, whose office and employment is merely temporal? That will not follow; nor this, Therefore the ministers of religion are in all things better; nor this, Therefore they are in nothing inferior; nor this, Therefore they are not subject to civil government, and civil punishments. But these things must be considered apart.

QUESTION I.

In what sense the service of God is to be preferred before every thing else.

§ 6. To this I answer, that,

1) If the service of God be taken in a sense opposed to any other thing which is not the service of God, there is no peradventure but it is to be preferred before every thing; for the question is no more than this, whether we ought to serve God, or not to serve Him. For if that which is not God's service comes in competition with that which is, if the first be preferred God is directly despised.

§ 7. 2) If by the service of God is meant the virtue of religion expressed in external action, as saying our prayers, receiving the holy

[b] [tom. iii. col. 452.]
[c] [Gratian. decret., part. 2. caus. xvi. quæst. 7. cap. 31. col. 1271; et inter concill., tom. iii. col. 973.]

sacrament, visiting churches, sitting at the memorials of martyrs, contemplation, fasting, silence, solitude, and the like, then it is as certain that the service of God in this sense is to be preferred before many things, but not before all things; not before many things of our ordinary life, not before many things of civil society. For to keep a holy-day is a part of the service of God, but not to be preferred before bodily labour in our trade, if that labour be necessary for the feeding our family with daily bread. Contemplation is an excellent part of the divine service; but charitable actions are more useful. To hear a good sermon is good; but to snatch even an ox out of a pit is to be preferred before it. This our blessed Saviour[d] taught us in those excellent words, "I will have mercy and not sacrifice." For not only the precise virtue of religion is the divine service, though by propriety it hath obtained the name: but the doing all our duties, the works of our calling, all charitable ministries, all useful trades, all the graces of the Spirit expressed in actions and obedience, is the service of God, and of one it cannot be said, it is better than another; for they shall all be required in their season.—For,

§ 8. 3) It is one thing to enquire which is in itself more excellent, and another thing to ask which we are to choose; one thing to say this is to be preferred in estimation, and another to say this is to be preferred in practice. Ecstasies and raptures and conversing with blessed spirits are certainly actions and passions respectively of greater eminency than dressing the sores of poor boys in hospitals: and yet he that does this serves Christ and does good, while he that follows after the others may fall into the delusions of the devil. That which is best in itself is not best for me: it is best for the best state, but not for the state of men who dwell in imperfection. Strong meat is better than milk, but this is best for babes; and therefore he would but ill consult to the good[e] of his child, who because it is a princely boy, would feed him with beef and venison, wild boar and the juice of great fishes. Certainly a jewel is better than a piece of frieze; and gold is a more noble and perfect substance than barley: and yet frieze and barley do in their season more good than gold and jewels, and are therefore much more eligible. For every thing is to be accounted of in its own place and scene of eminency: the eye loves one best, and the tongue and palate, the throat and stomach love the other. But the understanding which considers both gives the value according to the degree of usefulness, and to the end of its ministry. Now though our understanding can consider things in their own perfections, and proportion honour and value to them; yet that which is better than honour, love and desire, union and fruition, are due to those things most, which it may be we honour least. And therefore there are some parts of the service of God which are like meat and clothes, and some which are

[d] [Matt. ix. 13, xii. 7.]

[e] ['consult the good,' B, C, D.]

like gold and jewels; we value and admire these, but we are to choose the other: that is, we prefer one in discourse and the other in use; we give better words to one and better usages to the other. And therefore those parts of the divine service which are most necessary, and do most good to mankind, are to be chosen before those that look more splendidly, and in themselves import more perfection. The foundation of a house is better than the roof, though the roof be gilded; and that part of the service of God which serves the need of mankind most is to be chosen before those which adorn him better: so that actions of high and precise religion may be the excellencies and perfections of a human soul; but the offices of civil governors, their keeping men in peace and justice, their affrighting them from vile impieties, may do much more good to mankind, and more glory to God in the whole event of things.

§ 9. 4) But then if it be enquired whether is better, prayers or government, a pulpit or a court of judicature; I am to answer that they are both best in their time. The pulpit rules on sundays, the court of judicature all the week after. The pulpit guides the court, and the court gives laws to the pulpit. The pulpit gives counsel to this, and this gives commands to that. But there is this difference, if the pulpit says amiss we are not bound by it: but if the court judges ill, we may complain, but we must submit. But then to enquire which is better, when they are both the servants of God, is to make a faction in the house of unity; and as there can be no good end served in it, so there can be no good ground of reason or revelation by which it can be determined.

§ 10. 5) If the question at last be, whether is to be preferred, the service of God, that is, an act of religion, or an act of civil life; I answer, that ordinarily religion is to be preferred, when there can be a question reasonably asked which is to be chosen. That is, if it be indifferent as to the person, there is no indifference in the thing: for the religious act does more honour to God and more good to us. But it is because that where our life and time is empty of other duties, then and there is the time and proper season of religion. But if it be not indifferent to the man, but an act of life or civil calling be in its season and appointment, then this is to be preferred before that.

§ 11. 6) Lastly, it is to be observed that there are seasons ordinary and extraordinary in our services of God. Every thing in its season is to be preferred: and therefore upon festivals we are to go to church and to public offices, upon other days to follow the works of our calling; and so prefer both in their time. But sometimes these ordinary seasons are invaded by extraordinary necessities, and then that must prevail which is most necessary in its season, and the other must give place. Now because this happens often in the needs of our life, and not very often in the needs of religion, therefore in cases of natural or political necessities, the things of the common-

wealth are to be preferred before the things of the church; that is, the service of God in charity before the service of God in the virtue of external religion: and the reason is, because this can stay, and the other cannot; and this can be supplied with the internal, that is, the religion of the heart, but that cannot be supplied with the charity of the heart.

QUESTION II.

Which are to be preferred, and which are better, things spiritual or things temporal?

§ 12. To this the patrons of ecclesiastic monarchy give a ready answer out of S. Gregory Nazianzen[e], speaking to the presidents:— *Nam vos quoque potestati meæ meisque subselliis lex Christi subjicit: imperium enim ipsi quoque gerimus, addo etiam præstantius ac perfectius; nisi vero æquum est spiritum carni fasces submittere, et cœlestia terrenis cedere,* 'the law of Christ hath subjected you also that are civil magistrates to my chair: for we also have an empire, yea a better and more perfect than yours, unless it be reasonable that the spirit should submit to the flesh, and heavenly things give place to earthly.' For temporal things belong to the body, and spiritual things to the soul: by how much therefore the soul is above the body, by so much spiritual things are above the temporal. For a temporal end is and ought to be subordinate to a spiritual; because temporal felicity is not the last end of man, but spiritual and eternal: this therefore being the greatest, ought to be ministered to by the cession of the temporal.

§ 13. 1) To this I answer, that temporal things ought to yield to spiritual, if by spiritual things be meant the glory of God, and the good of souls; but not to every thing that is spiritual. For though it be a spiritual employment to serve God in the communion of saints, and the life of a man be a temporal thing; yet a man is not bound to lose his life to go to public churches: but for his own soul's salvation, for the promotion of religion and the honour of God, he is. A man is very much better than a beast; yet the life of a beast is better than the superfluous hair of a man's beard. The honour and reverent usage of churches is a spiritual concern, and a matter of religion; and yet when an army is hard put to it, they may defend themselves by the walls and strength, and preserve their lives with an usage of the church, which was never intended by the patron that built it, or the bishop that consecrated it. When temporal life and eternal are compared, when the honour of God or the advantage of a man are set in opposition, when the salvation of a soul and the profit of trade are confronted, there is no peradventure but the temporal must give way to the spiritual. But when a temporal necessity and a spiritual advantage are compared, the advantage in

[e] Orat. xvii. ad subd. tim. perculs. [§ 8. tom. i. p. 322 E.]

the nature of the thing is overbalanced by the degree of the necessity, and the greatness of the end: and it is better to sell the chalices of the church, and minister to religion in glass or wood, than to suffer a man to starve at the foot of the altar. The consequent of this consideration is this, that although spiritual things are better than temporal, yet not every thing of spiritual nature or relation is to be preferred before all temporals.

§ 14. 2) Another consideration is this, that there is difference also in the degrees and measures of cession or yielding. Temporal things must yield, that is, we must so order our affairs that by them we serve God; our money must go forth in justice and charity, our time must yield up portions to religion, our persons must decline no labour for God's service, and if ever there comes a contest between our duty and our profit, or our ease, or our advantage, we must by the loss of these secure our gains and our interest in that. But this preferment of one before another does not consist in giving to one secular advantages before the other, temporal honours, and precedences in processions, in escutcheons and achievements; but in doing the duty of that which is incumbent, and making the other minister to that which is more necessary. He that prefers religion before the world is not tied to bestow more money upon his chapel than upon his house. If God had chosen Him one place of residence, and a temple for His house and for the religion of the nation, as He did among the Jews, there had been a great decency and duty of doing so upon many accounts; for then the question had been between religion and irreligion, zeal and contempt, love of God and neglect; and then the determination had been easy. But now since the whole end of internal religion can be served by giving to places of religion that adornment which may make the ministries decent and fitted, and of advantage; beyond this, when we come to a dispute between that which is in order to a spiritual end, and that which serves a temporal, more things are to come into consideration besides the dignity of the relation.

§ 15. 3) For it is yet further to be observed, that when it is said that all temporal things are subordinate to our spiritual ends, the meaning is, that all the actions of our life, all that we are, and all that we have, must be directed actually or habitually to the great end of man, the glorification of God and the salvation of our souls: because God hath ordained this whole life in order to that; and therefore in the generality it is true that all temporal things are to minister to spiritual. But then this is to be added, that temporal things are not ordained to minister to spiritual intermedial things; such, I mean, which are not directly and in circumstances necessary. I must serve God with my substance; therefore I must by my substance contribute to the just and appointed ministries of religion: but it does not follow, that if the church multiply priests unnecessarily, and God hath multiplied my children naturally, that therefore I must let my

children want to feed the numerous company of them that can minister spiritual things. The whole is subordinate to the whole, that is, all our temporalities are given us to serve God with: but then they are given us also to serve our own needs that we may serve God; but they are not any other ways subordinate, but to enable us to serve Him, not to serve the particular spiritual end; unless it be by accident, that is, not unless we cannot serve God without it.

§ 16. 4) For temporal things and spiritual things have both the same supernatural end, that is, God's glory and eternal felicity. And sometimes they severally tend to this end, and then they are to go their own ways, and not to minister and be subordinate to each other. But sometimes they are to combine and to co-operate, and then temporal things must serve spiritual, and spiritual must serve the temporal. For example: the temporal or civil power hath for its end public tranquillity, that men may serve God in all godliness and honesty. The ecclesiastical power hath the same end: ἱερωσύνη καὶ βασίλεια εἰς ἓν ὁρῶσι τέλος, τῶν ὑπηκόων σωτηρίαν, said Isidore Pelusiot. I shall not now consider the whole effect of this truth, but in order to the present say, that since both temporal and spiritual things minister to the same end, that is, salvation of mankind, they are distinct methods or instruments to that end, and of themselves are not in subordination to one another; but as temporal things must serve spiritual when there is need, so must spiritual serve the temporal when they require it: the temporal power must defend religion, and religion must minister to the public peace. The prince must give advantages to the ministers of religion; and the ministers of religion must pray for the prince's armies, his prosperity, his honour, and by preachings and holy arts must give bridles to the subjects, keeping them in duty by the means of conscience. The prince by laws and fear makes men just and temperate, chaste and peaceable; the priest does but the same thing by the word of his proper ministry. He that does it most effectually is the most happy: but he that will go about to compare which does it most, and therefore is to be preferred, shall then hope to do it prosperously when he can tell which side of the equinoctial hath most stars, or whether have most drops of water, the northern or the southern seas. The sum of this consideration is this, that although temporal things in their latitude are to serve spiritual ends, meaning, the great end of the perfection of our spirits: yet so must the intermedial spiritual things serve the same great end: but the intermedial temporal and the intermedial spiritual are not subordinate to one another, unless it be by accident, and that may and often does happen on either side.

§ 17. But I must add one thing more for explication; and that is, that though all things in the world are to minister to the great end of souls, and consequently are subordinate to that great end; yet it is (that I may use S. Paul's expression in another case) by reason of Him that hath put all things under it: for this subordi-

nation is not natural, or by the nature of the thing, but by the wise economy and disposition of God; who having appointed that all things shall be sanctified by the word of God and prayer, that natural powers shall be heightened by grace, and shall pass into supernatural, and this world into another, hath by His own positive order disposed of temporal things and powers beyond their own intention. But otherwise, temporal things have an ultimate end of their own, terminating all their natural intention and design. Thus the end of the mariner's art is not the salvation of the souls of them that sail with him, but the safe landing of their persons and goods at the port: and he that makes statues hath for his end a perfect image. Indeed the man may have another end, to get reputation, to maintain his family, to breed up his children 'in the nurture and admonition of the Lord,' and at last the salvation of his own soul, by doing things honest and profitable: but though these may be the ends of the man, yet they are not the ends of his art; and therefore his art hath no natural subordination, because it hath no natural order to eternal salvation. And this is the case of many temporal things, especially arts, offices, entercourses and governments. Therefore supposing all that is said in the objection, that temporal felicity is not the last end of man, but spiritual and eternal, yet though it be not the end of a man, it may be the end of human government; and by not being a natural order to spiritual ends, though spiritual be a better thing, yet it follows not that it ought to take place of that, upon the account of its being better in another kind. The body indeed is subordinate to the soul, because it hath all its motion and operation and life from the soul, and in a natural conjunction and essential union is its appointed instrument: but temporal things and spiritual are not so conjoined, and do not naturally, but by accident, minister to each other; and therefore are made subject to each other alternately, when they are called to such accidental or supernatural ministrations.

QUESTION III.

Whether are to be preferred, spiritual or temporal persons?

§ 18. How spiritual things are to be preferred before temporal I have already accounted; but it is a consideration distinct from that, whether spiritual persons be to be preferred before temporal. For from things to persons it will not follow: and he that hath a better art is not always the better man; and he that is employed in the best concernments, hath not always the advantage of profession. There was a time in Rome when the physicians were but servants, and had not the liberty of Romans: but certainly it is a better trade than fighting: and yet then the soldiers were accounted the greater men. Herod the sophister[f] had a son that was a fool and could never

[f] [Philostr. vit. sophist., in Herod. Attic., lib. ii. p. 556 D.]

learn the alphabet, but he had two and twenty slaves that were wise fellows; but the master was the better man. But when the question is concerning the honour and dignity of persons, we are to remember that *honor est in honorante*[8]: many men deserve honour that have the least of it, and it is as it is put upon us by others. To be honoured is to have something put to them, it is nothing of their own. Therefore in this question there are two things to be asked: the one is, what spiritual persons deserve; the other is, what is given them. They may deserve more than they have, or they may have more than they deserve; but whether either or neither happens, 'he that honours himself, his honour is nothing;' but he is honourable whom God or the king honours: and therefore spiritual persons ought to receive much, but to challenge none; and above all things ought not to enter into comparison with them from whom all temporal honour is derived. But when the question is concerning the prelation of secular or ecclesiastic persons, the best answer is given to it when they strive to prefer one another in giving honour to each other. But I remember that the legates at Trent were horribly put to it to place the orators of the kings of France and Spain, who would both go first: they at last found an expedient, and they did both go first, and both were preferred in several positions. So is the spiritual person and the civil, they are both best, but the honour of one is temporal, and the honour of the other is spiritual; or rather, one is properly called honour, and the other reverence. Honour the king, reverence his priests. But this question is not properly a question of right, but of duty: and the spiritual man must not call for it, but the other must pay it. And it is something a sad consideration to think that all the questions of the preference and comparison of spiritual and temporal persons do end in covetousness and ambition, to which spiritual eminency, let it be never so great, was never intended to minister. For the honour due to spiritual persons for their spiritual relation is a spiritual honour, and that though it be never so great cannot well be compared with temporal; for it is a great honour in another kind: but whatsoever temporal honours are given to them, are then well given when they are done in love to religion; and are then well taken when the advantage passes on to the good of souls, and does not sully the spiritual man with spiritual pride or temporal vanity. Socrates complains that the bishops of Alexandria and of Rome were 'fallen into empire,' or dominion. That's none of the preference proper to a spiritual man. He is then honoured, when his person is had in reverend and venerable esteem, when his counsel is asked, when his example is observed and followed, when he is defended by laws and princes, when he is rescued from beggary and contempt, when he is enabled to do his duty with advantages, when he can verify his ecclesiastical power, when he can

[8] [Δοκεῖ γὰρ ἐν τοῖς τιμῶσι μᾶλλον εἶναι ἢ ἐν τῷ τιμωμένῳ .. ἡ τιμή.—Arist. eth. Nic., lib. i. cap. 3.]

vindicate religion from oppression, and lastly, when his person, which is the relative of religion, receives those advantages which as a man he needs, and which can adorn him as such a man. But if he disputes for any other honour, so much is his due as is given him by christian princes or commonwealths, and no more; and he will gain the more by making no further question. Christ gave His apostles power abundantly, but the greatest honour He gave them was to suffer for His name; and of this He promised they should want nothing: but when kings became nursing fathers of the church, and she sucked the breasts of queens and princely women, then the spiritual persons and guides of souls had temporal honours heaped on them, as the offerings were made for the tabernacle, more than was sufficient. For it quickly rose into excess, and then the persons of the prelates fell into secular affections, and grew hated and envied and opposed. Ammianus Marcellinus[h], giving an account of that horrible sedition raised in Rome in the contest between Damasus and Ursicinus about the papacy, says he wonders not that the prelates did so earnestly contend for the bishopric of Rome, *cum id adepti, futuri sint ita securi, ut ditentur oblationibus matronarum, procedantque vehiculis insidentes, circumspecte vestiti, epulas curantes profusas, adeo ut eorum convivia regales superent mensas,* 'because when they have obtained it, they are safe and warm, full with the oblations of the good women, and are carried in their *caroches,* and are neatly habited, and splendidly feasted, and themselves keep tables beyond the profuseness of kings.' Now although bishops are men, and religion itself is served by men who have bodies and secular apprehensions, and therefore does need secular advantages; yet this belongs to them as men, not as spiritual. It is just as if you should call the general of an army 'holy father,' and beg his blessing, and set him in the chiefest place of the quire, and pray him to preach upon the greatest festivals of the year, and run in multitudes to hear him speak. These are the proper honours of spiritual persons; and the splendour of the world is the appendage of secular achievements: whatsoever is necessary for their persons in order to the advantages of religion is very fit to be given by princes to the bishops, who will certainly modestly entertain it, and by pious conduct transfer it to the glory of Christ and the good of souls. But this is none of the honour that Christ invested their holy order with: they have an honour and a blessedness which none but themselves can take from them. The rosary of christian graces is the tiar of their head, and their office is their dignity, and humility is their splendour, and zeal is their conquest, and patience is their eminence, and they are made illustrious by bringing peace, and promoting holiness, and comforting the afflicted, and relieving the poor, and making men and women useful to the public, and charitable in their ministries, and wise unto salvation. This is that which was spoken by God in the

[h] [lib. xxvii. cap. 3. ad fin.]

prophet Isaiah[1], "Since thou wast precious in My sight thou hast been honourable." And this was observed by the pagan, who being surprised with the secular splendor of the Roman bishops liked it not, but said that there was another way for them to be truly happy: *Esse poterant beati revera, si magnitudine urbis despecta quam vitiis opponunt, ad imitationem antistitum quorundam provincialium viverent, quos tenuitas edendi potandique parcissime, vilitas etiam indumentorum, et supercilia humum spectantia, perpetuo numini verisque ejus cultoribas ut puros commendant et verecundos.* They are the words of Ammianus Marcellinus[j] whom I lately mentioned,—'the Roman bishops might indeed be truly happy, if they despising the splendors of the city would live as some bishops in the provinces, whom their temperate and spare diet, their plain habit and their humble carriage represent to God and all God's servants as persons pure and modest.' But then if this discourse have any thing of reason, piety or truth in it, it must needs be infinitely certain that spiritual persons are to be preferred before the temporal in spiritual honours, but not in temporal regards; they have nothing to do with them by virtue of their order or their office: what they have to their persons by the favour of princes and nobles is of another consideration, and so this question is changed into an advice, and best ends in a sermon or declamation.

QUESTION IV.

Whether the eminency of the spiritual calling, and the consequent prelation of spiritual persons, can exempt them from secular coercion and make them superior to princes.

§ 19. In what senses bishops have any superiority over princes I shall afterwards explain: now the question is concerning secular superiority, and immunity from the temporal sword of princes. Now to this, I suppose, what I have already said may be able to give an answer. For the spiritual order gives no temporal power at all; and therefore if all temporal power be in the supreme civil magistrate, all men that can deserve to feel the edge of the sword are subject to it. For what? Had Archimedes reason to take it ill of the Romans for not sending for him and making him general in the Syracusan war, because he was a better geometrician than any of all their senate? Lewis the eleventh of France had a servant who was an excellent surgeon, and an excellent barber, and dressed his gout tenderly, and had the ordering of his feet and his face, and did him many good offices. But the wise prince was too fond when for these qualities he made him governor of his counsels. Every good quality, and every eminence of art, and every worthy employment hath an end and design of its own, and that end and the proportions to it are to be the measure of the usage of those persons which are appointed to

[1] [Isai. xliii. 4.] [j] [ubi supra.]

minister to it. Now it is certain that spiritual persons are appointed ministers of the best and most perfective end of mankind, but to say that this gives them a title to other ministries which are appointed to other ends, hath as little in it of reason as it hath of revelation. But I shall not dispute this over again, but shall suppose it sufficient to add those authorities which must needs be competent in this affair, as being of ecclesiastic persons, who had no reason, nor were they willing, to despise their own just advantages, any more than to usurp what was unjust.

§ 20. When Origen complained of the fastuousness and vanity of some ecclesiastics in his time, they were bad enough, but had not come to a pretence of ruling over kings upon the stock of spiritual prelation: but he was troubled that some had quit their proper excellency, consisting in the multitude of spiritual gifts, their unwearied diligence in the care of souls, their dangers, their patience, their humility, and their dyings for Christ. *Et hæc nos docet sermo divinus,* saith he, 'the word of God teaches us these things: but we either not understanding the divine will set down in scriptures, or despising what Christ to such purposes recommended to us, are such that we seem to exceed the pride even of the evil princes of the world: and we do not only seek for guards to go before us like kings, but are terrible to the poor, and of difficult access, and behave ourselves towards those who address themselves to intercede for some thing or some person, that we are more cruel than tyrants, and the secular lords of their subjects: and in some churches you may see (especially in the churches of the greatest cities) the chief of the christian people neither affable to others, nor suffering others to be free in their entercourses with them.' These things are out of the way of the ecclesiastics, for these things cannot consist with piety and humility, and the proper employments of such persons who gained the world by cession, and got victory over whole kingdoms by trampling upon devils, and being trampled upon by men. Bishops should be like the symbols of the blessed sacrament, which, although for the ornament of religion and for our sakes, and because we would fain have opportunity to signify our love to Christ, we minister in silver and gold, yet the symbols themselves remain the same plain and pure bread and wine, and altered only by prayers, and by spiritual consecration, and a relative holiness. But he were a strange superstitious fool who, because the sacramental bread and wine are much better than all the tables and viands of princes and all the spoils of nature, will think it fit to mingle sugar and the choicest spices of Arabia with the bread, and ambergris and powder of pearl and the spirit of gold with the chalice. These are no fit honours to the holy sacrament: the symbols of which are spoiled when they are forced off from the simplicity and purity of their institution and design. So it is with spiritual persons: their office is spiritual, and their relation is holy, and their honours are symbolical. For their own

sakes, princes and good people must cause decent and honourable ministries and accommodations to be provided for them; but still they must remain in their own humility, and meekness, and piety, and not pretend to dignities heterogeneal, and eminences secular, because their spiritual employment is very excellent. It was S. Gregory Nazianzen's[k] wish, that there were in the church μηδὲ προεδρία μηδέ τις τόπου προτίμησις καὶ τυραννικὴ προνομία, ἵν' ἐξ ἀρετῆς μόνης ἐγινωσκόμεθα, 'neither precedency of episcopal sees, nor any eminency of one place above another, nor any tyrannical or pompous provisions and solemnities, that we might be distinguished only by our virtue.' Now if prelation by order and ecclesiastical economy amongst the bishops was of so ill effect, so little necessary, and so greatly inconvenient, that the good bishop wished there were no such thing; there is little reason to doubt, but he would have infinitely condemned all pretensions of a power over civil governments. But the bishops of Rome were not at that time gone so far. The archimandrites of Constantinople, complaining against the Eutychians, write to pope Agapetus[l], that if they be still permitted, *licenter omnia accedent, non contra ecclesiasticos solos, sed etiam contra ipsum piissimum imperatorem, nostrum et vestrum honorabile caput,* 'they will do insolencies not only to the ecclesiastics, but also to our most pious emperor, who is the honourable head both of you and us.' This power of headship or supremacy over the whole order ecclesiastical was acknowledged in the church for about a thousand years: for besides the apparent practice and approbation of it, which I brought in the former pages, we find that the emperor Henry the second did deprive Widgerus of the archbishopric of Ravenna, and deposed Gregory the sixth from the papacy[m].

§ 21. And therefore we find that those ancient prelates that called upon princes to pay reverence to them, and an acknowledgment of that authority which Christ entrusted in their hands, accounted them wholly to be distinct things, and not at all invading each other's limits. For Christ by making them Christians did not make them less to be princes: and christian emperors could not go less than the heathens; they were certainly no losers by their baptism. For it had been a strange argument for Sylvester to have used to Constantine, 'Sir, give up yourself a disciple to the most holy Jesus, and you shall have a crown hereafter, and here also you shall still reign over all but me and my clergy; to us indeed you must be subject, and by us you must be governed, but the crown imperial shall be greater than every thing, our mitres only excepted.' If this had been the state of the question, I wonder by what argument could the prince have been persuaded to become christian: when it was so

[k] Orat. post reditum. [Orat. xxvi. § 15. tom. i. p. 483 B.]

[l] In 5ta synod. act. 1. [al. 5.] tom. ii. concil. [ed. Bin. p. 426.]

[m] Herman. in Chron. [ad A.D. MXLVI. tom. i. p. 287, inter Pistorii rer. German. script., fol. Ratisb. 1726.]

obvious for him to say, that Sylvester had reason to move him to preach Christ, since he got so much temporal advantage by it, but that he could see little reason why himself should lose and Sylvester get, and become a disciple of Christ to be made a minor and a pupil to the bishop. And indeed it would have been a strange sermon that preaches humility to emperors and dominion to bishops; but their sermons when they were at the highest were of another nature. *De humanis rebus judicare permissum est, non præesse divinis,* so P. Gelasius[n] declares the limit of the imperial and priestly power: of all things belonging to this world the emperor is to judge, but not to be the president or chief minister of holy rites. Gelasius spake it upon occasion, because Anastasius the emperor did unnecessarily interpose in the absolution of Peter bishop of Alexandria. This pope Gelasius supposed was of another nature, and not relative to the things of this world, and therefore not of imperial cognizance. But all the things of this world belong to him. And if all things of this world, then all persons of this world. For *Circa actiones proprie versatur imperium,* say the lawyers, 'rule and empire and all power of judicature is principally concerning actions;' but actions are done by persons, who therefore are subject to government. And upon this account the African bishops[o] petitioned the emperor that he would compel Paul the bishop of Constantinople to be of the catholic communion. And the fathers of the ninth council of Toledo[p], making provisions against those ecclesiastics who prevented the just dividend of the public oblations, they first order them to be privately reproved, or else to be delated to the bishop, or to the judge. But if the bishop cozen the *corban,* let him be delated to the metropolitan: but if the metropolitan do any such vile thing, *Regis hæc auribus intimare non differat,* 'let him without delay be accused unto the king.' And Lambert the emperor, about the year of our Lord DCCCC., having some contest with the pope, propounded this first article in a synod at Ravenna[q], 'If any Roman of the clergy or the senate, of what order soever, shall either voluntarily or by compulsion appeal to the imperial majesty, let no man presume to contradict him: .. until the emperor by himself or his missives shall deliberate concerning their persons and their causes.' Thus we find pope Leo[r] the fourth submitting himself to Lotharius the emperor, and promising obedience: and to Ludovicus[s] he professes that if he have done amiss he will amend it according to his sentence, or the judgment of his deputies. Upon the consideration of these and many other particulars Gratian[t], though unwillingly, confesses that in civil causes a clergyman is to

[n] Tom. de vinc. anathem. [inter concill. Harduin., tom. ii. col. 934 E.]

[o] Concil. Later. consult. 2. sub. Martino 1, [tom. iii. col. 737.]

[p] [can. i. tom. iii. col. 973.]

[q] Apud Baron., tom. x. A.D. DCCCCIV. n. 17. [p. 661.]

[r] [Gratian. decret., part. 1.] Dist. x. c. 'De capitulis.' [can. 9. col. 35.]

[s] [Part. 2.] caus. ii. qu. 7. can. 'Nos si.' [can. 41. col. 761.]

[t] 11. q. 1. c. 'Sicut enim.' § 'Ex his.' [col. 987. not.]

be convened before the civil judge: and although a little after he does a little prevaricate in the matter of criminal causes, yet it was too late; for he had said it before, *Regum est corporalem irrogare pœnam*[u], 'kings have the power of inflicting corporal punishments:' and therefore if a clerk were guilty in a criminal cause, the secular judge had power over him, said the fathers of the first council of Matiscon, *cap.* 7[x]. But it matters not much, for a greater than Gratian said it in his own case before the civil power, "If I have done any thing worthy of death, I refuse not to die:" they are the words of S. Paul[y].

QUESTION V.

Whether is to be obeyed, the prince or the bishop, if they happen to command contrary things?

§ 22. To this I answer, that it is already determined that the emperor is to be obeyed against the will of the bishop. For so it was in the case of Mauritius and S. Gregory; for the bishop was fain to publish the prince's edict which yet he believed to be impious. It was also most evident in S. Athanasius of Alexandria, S. Gregory of Nazianzum, S. Chrysostom of Constantinople, Eusebius of Samosata, who by injustice were commanded to leave their dioceses.

§ 23. But this is to be understood in actions which can by empire and command be changed into good or bad respectively: because such actions are most properly the subject of human laws. For in what God hath expressly commanded or forbidden, the civil or ecclesiastical power is only concerned to serve the interest of the divine commandment, to promote or to hinder good and evil respectively. But whatsoever is left undetermined by God, that the supreme power can determine: and in such things if there could be two supreme powers, the government were monstrous, and there could be no obedience; for 'no man can serve two masters[z].' Now the supreme power hath in this no limit, but that which limits both powers, the laws of nature and the laws of Jesus Christ: and if there be any thing commanded by the prince against these, the bishop is to declare the contrary, that is, to publish the will of God, provided it be in an evident matter and without doubtful disputation. And then, this being provided for, the case cannot be supposed that the king and the bishop both doing their duty can command things contrary. I do not say but a temporal law may be against the canons of the church; but then we are to follow the civil law, because the power is by the law of nature supreme and imperial. The matter of the civil power and ecclesiastical is so wholly differing, that there where either hath to do it cannot contradict the other; but if they invade the rights of one another, then the question grows hard. But the solution is this;

[u] 2. q. 2. § 'Item.' [can. 41. col. 761.]
[x] [tom. iii. col. 452.]
[y] [Acts xxv. 11.]
[z] [Matt. vi. 24; Luke xvi. 13.]

§ 24. If the bishop invades the rights of the civil power he is not at all to be obeyed, for he hath nothing to do there. But if the civil power invades the rights of the bishop, then they are either such rights which are his by positive laws and human concession, or such which by divine appointment are his due.

§ 25. All those which are the bishop's right by positive laws may by the same power be rescinded by which they were granted; and therefore if a king makes a law against the rights of the church, and the bishop protests against that law, the king and not the bishop must prevail. For *Neminem sibi imperare posse, et neminem sibi legem dicere, a qua mutata voluntate nequeat recedere,* say the lawyers. A man may change his will as long as he lives; and the supreme will can never be hindered: for *summum ejus esse imperium qui ordinario juri derogare valeat* is a rule in law, 'he that is the supreme can derogate by his power from an ordinary right,' viz. by making a contrary law.

§ 26. But if they be the rights of bishops and the ministers of religion by divine appointment, then the bishop's command is to prevail, *cum conditione crucis;* that is, so as the subject must submit to the prince's anger, and suffer for what he cannot do, according to that of S. Austin,—*Imperatores cum in errore sunt, pro errore contra veritatem leges dant, per quas justi et probantur et coronantur, non faciendo quod illi jubent, quia Deus prohibet,* 'mistaken princes make ill laws; but by them good men are tried and crowned, by not doing what God hath forbidden them.' This is much more modestly expressed than that responsory in the Roman breviary[a] speaking of the apostles, *Isti sunt triumphatores et amici Dei, qui contemnentes jussa principum meruerunt præmia æterna,* 'they have deserved eternal rewards by despising the commands of princes.' The expression is hard; for though their impious laws are not to be obeyed, yet indefinitely it is not safe to say, their commands are to be despised. And none ever less despised the laws, than they, who, because they could not obey them against God, yet obeyed them against themselves by suffering death at their command, when they might not suffer a sin.

§ 27. But then this also suffers diminution. For if the ecclesiastical power in such things where their authority is proper and competent and divine, give any negative or prohibitive precepts, they may and they must be obeyed entirely; because every negative is indivisible, and hath neither parts nor time: and in this they are but proclaimers of the divine commandment, which if it be negative it can never be lawful to do against it. But in positive instances of commandment, though from divine authority (for that's the limit of the ecclesiastical power and authority), if the king commands one thing and the bishop another, they are severally to be regarded according to the several cases. For the rule is this, that all external

[a] De communi apost., R. 6. [in resp. post lect. 6.]

actions are under the command of the civil power in order to the public government: and if they were not, the civil power were not sufficiently provided for the acquiring the end of its institution: and then it would follow that either the civil authority were not from God (expressly against S. Paul), or else all that God made were not good, as being defective from the end of its creation (expressly against Moses, and indeed against the honour of God). Now because external actions are also in order to religion internal, it happens that the spiritual power hath accidentally power over them. Here then is the issue of this enquiry: when an external action is necessary to the public service, and yet in order to religion at the same time, the positive commands of the spiritual superior must yield to the positive commands of the supreme civil power. For that which hath a direct power is to be preferred before that which hath but an indirect power. Thus it is a divine precept that we should not neglect the assembling of ourselves together. Upon the warranty of this the guides of souls have power to command their flocks to meet at the divine service; and they are tied to obey. But if at the same time the prince hath given command that those persons or some of those who are commanded to be at the divine offices, be present on the guards, or the defence of the city walls, they are bound to obey the prince, and not the priest at that time. For besides the former reason, when external actions are appointed by competent authority, they are clothed with circumstances with which actions commanded by God, and in which ecclesiastics have competent authority, are not invested: and amongst these circumstances, time and place are the principal. And therefore it follows that in external actions the command of the prince is always to be preferred before the command of the church; because this may stay, and that cannot: this is not by God determined to time and place, but that is by the prince; and therefore by doing that now, and letting this alone till another time, both ends can be served: and it were a strange peevishness of government (besides the unreasonableness of it) to cross the prince to shew our power, when both may stand, and both may be obeyed: if they did not crowd at the same narrow door together, there is time enough for them to go out one after another; and by a little more time there will be a great deal of more room. I have heard that when king James the sixth of Scotland was wooing the Danish lady, he commanded the provost of Edinburgh and the townsmen upon a certain day to feast the Denmark embassadors, and to shew all the bravery of their town and all the splendour they could: of which when the presbytery had notice, they to cross the king proclaimed a fast to be kept in the town upon that very day. But the townsmen according to their duty obeyed the king; and the presbytery might have considered that it was no zeal for God that the fast was indicted upon that day, but God might have been as well served by the Tuesday fast as by the Monday. Thus if the ecclesiastic power

hath admitted a person to ecclesiastical ministries or religions, if the supreme civil power requires his service, or if he be needed for the public good, he may command him from thence, unless there be something collaterally to hinder; as if the prince have sworn the contrary, or that the person required have abjured it by the prince's leave: but supposing him only bound by the ecclesiastical power, the supreme civil power is to prevail over it, as being the lord of persons and actions external. An instance of this was given by Mauritius the emperor forbidding his soldiers to turn monks without his leave, though the law was made sore against the mind of S. Gregory who was the bishop of Rome. And thus Casimire[b] king of Poland was taken from his gown, and invested with a royal mantle; and divers monks have been recalled into the employments of armies, or public counsels, or public governments.

§ 28. But this also is to be understood with this provision. The supreme civil power hath dominion over external actions, so as to govern them for time and place and other circumstances. He can forbid sermons at such a time; he can forbid fasts or public solemnities and meetings when he please, and when it is for the interests of government: and concerning any accident or circumstance and manner he can give laws, and he must be obeyed. But he cannot give laws prohibiting the thing itself, out of hatred or in persecution of the religion: for then the ecclesiastic power is to command not only the thing, but the circumstances too. For the thing itself, it is plain, because it is a divine commandment, and to this the spiritual power must minister, and no civil power can hinder us from obeying God: and therefore the apostles made no scruple of preaching Christ publicly, though they were forbidden it under great penalties. But then for the circumstances, they also in this case fall under the ecclesiastical power. If the prince would permit the thing, he might dispose of the accidents; for then he is not against God, and uses his right about external actions. But if he forbids the thing, they that are to take care that God be obeyed must then invest the actions with circumstances; for they cannot be at all, unless they be in time and place; and therefore by a consequent of their power over the thing they can dispose the other, because the circumstances are not forbidden by the prince, but the thing, which being commanded by God and not being to be done at all but in circumstances, they that must take care of the principal must, in that case, take care also of the accessory. Thus we find the bishops in the primitive church indicting of fasts, proclaiming assemblies, calling synods, gathering synaxes: for they knew they were obliged to see that all that should be done which was necessary for the salvation of souls and instruction of lives by preaching, and for the stabiliment of the church by assemblies and communions. Now the doing of

[b] A. D. MXL. [Cromer. de orig. Polon., lib. iv. p. 450, inter script. hist. Polon. Pistorii. fol. Bas. 1582.]

these things was necessary, and for the doing of these they were ready to die; for that passive obedience was all which they did owe to those laws which forbad them under pain of death: for it was necessary those things should be done, it was not necessary they should live. But when the supreme civil power is christian and does not forbid the thing, there is no danger that God shall not be obeyed by the prince his changing and disposing the circumstances of the thing; and therefore there can be no reason why the prince should be disobeyed, commanding nothing against God, and governing in that where his authority is competent. Thus if the supreme civil power should command that the bishops of his kingdom should not ordain any persons that had been soldiers or of mean trades to be priests, nor consecrate any knight to be a bishop; though the bishops should desire it very passionately, they have no power to command or do what the civil power hath forbidden. But if the supreme should say there should be no bishops at all, and no ordination of ministers of religion according to the laws of Jesus Christ, then the question is not whether the supreme civil power or the ecclesiastical is to be obeyed, but whether man or God: and in that case if the bishops do not ordain, if they do not take care to continue a succession in the church of God, they are to answer for one of the greatest neglects of duty of which mankind is capable; always supposed that the order of bishops is necessary to the church, and that ordination of priests by bishops is of apostolical institution, and that there is no univocal generation of church ministers but by the same hands which began the διαδοχή, 'succession,' and hath continued it for almost seventeen ages in the church. Of which I am not now to interpose my sentence, but to answer the case of conscience relying upon the supposition. This only I am to add, that supposing this to be necessary, yet it is to be done *cum conditione crucis*, with submission to the anger of the laws if they have put on unjust armour; and to be done with peaceableness, and all the arts of humility and gentleness, petition and wise remonstrances.

But there is yet one reserve of caution to be used in this case. If the civil power and the spiritual differ in this particular, the spiritual must yield so long, and forbear to do what is forbidden by their lawful supreme, until it be certain that to forbear longer is to neglect their duty, and to displease God. If the duty or if the succession can be any way supplied, so that the interest of religion be not destroyed, then cession or forbearance is their duty. And therefore if the king of Portugal should forbid consecrations of bishops in his kingdom, not for a time, but for ever, the bishops were bound to obey, if they could be supplied from other churches; or if it were not necessary that God should have a church in Portugal, or if without bishops there could be a church. But if they be sure that the bishops are the head of ecclesiastical union, and therefore the conservators of being; and if the remaining prelates are convinced that

God hath required it of them to continue a church in Portugal, (as it is certain that by many regards they are determined there to serve God's church, and to provide for souls and for the religion of their charges,) and if they could be no otherwise supplied with ecclesiastical persons of the order and ordination apostolical, as if other churches would not ordain bishops or priests for them but upon sinful conditions and violation of their consciences: then the spiritual power is to do their duty, and the supreme civil power is to do their pleasure; and the worst that can come is the crown of martyrdom, which whosoever gets will be no loser. And therefore I cannot without indignation consider it, that the pope of Rome, who pretends to be a great father of Christians, should not only neglect but refuse to make ordinations and consecrations in that church: which if their prince should do, the bishops ought to supply it by their care; and therefore when the prince desires it, as it is infinite dishonour to the bishop of Rome to neglect or refuse, in compliance with the temporal interest of the king of Spain, so it is the duty of the bishops of Portugal to obey their prince. But I have nothing to do to meddle with any man's interest, much less that of princes: only the scene of this case of conscience happens now to lie in Portugal, and the consideration of it was useful in the determination of this present question.

§ 29. But this question hath an appendent branch which is also fit to be considered. What if the civil laws and the ecclesiastical be contrary? as it happens in divers particulars; as if the prince be a heretic, an Arian or Macedonian, and happens to forbid the invocation of the Holy Ghost, or giving divine honours to the Son of God, and the church hath always done it, and always commanded it. What is to be done in this case? This instance makes the answer easy: for in matters of faith it is certain the authority and laws of God have made the determination, and therefore in these and the like the church is bound to do and to believe and to profess according to the commandment of God. But how if the prince does not forbid the internal duty (for in that his authority is incompetent) but commands only that there should be no prayers to the Holy Ghost put into the public liturgies of the church? to this the answer is certain, that though in all externals the supreme civil power is to be obeyed, yet the spiritual power in such cases is tied to confess the faith which the prince would discountenance, and to take care that their charges should plentifully supply in all their private devotions what is not permitted to them in public. And the reason of this is not that they are tied to do any thing in opposition or scandal to the prince; but that they are in duty and charity to provide lest the public discouragement and alteration of the circumstance of the duty do not lessen the duty internal and essential: and therefore they are to put so much more to the private, that they may prevent the diminution which is likely to come upon the private duty from the public prohibition.

§ 30. But there are some civil laws which are opposed to ecclesiastical, not by contrariety of sanction and command *hinc inde*, but by contrariety of declaration or permission respectively. Thus if the ecclesiastical laws have forbidden marriage in a certain degree, and the civil power hath permitted it, then the subject may more safely obey the power ecclesiastical; because by so doing he avoids the offending of religious persons, and yet disobeys no command of the prince; for no civil power usually commands a man to marry in a certain degree: and therefore when he is at liberty from the civil law, which in this case gives him no command, and he is not at liberty from the ecclesiastical law, which hath made a prohibition, he must obey the church; which if it had no power over him, could have made no law, and if it have a power, it must be obeyed; for in the present case there is nothing to hinder it. So it is in such things which are permitted for the hardness of men's hearts or the public necessity. The permission of the prince is no absolution from the authority of the church. Supposing usury to be unlawful, as it is certain many kinds and instances of it are highly criminal, yet the civil laws permit it, and the church forbids it. In this case the canons are to be preferred. For though it be permitted, yet by the laws no man is compelled to be an usurer; and therefore he must pay that reverence and obedience which is otherwise due to them that have the rule over them in the conduct of their souls.

§ 31. The case is alike in those laws where the civil power only gives impunity, but no warranty. As in such cases when laws indulge to a man's weakness and grief; as when it permits him to kill any man that creeps in at his windows, or demands his purse of him on the high way, or to kill his adulterous wife if he surprises her in the sin: if the civil power promises impunity, and does not intend to change the action from unlawful to lawful, as in some cases it does, in some it cannot; then if there be any laws of the church to the contrary, they pass an obligation upon the conscience, notwithstanding the civil impunity. And there is great reason for this. For since the affairs of the world have in them varieties, and perplexities besides, it happens that in some cases men know not how to govern by the strictest measures of religion, because all men will not do their duty upon that account; and therefore laws are not made (*ut in Platonis republica* but as *in fæce Romuli*[c];) with exact and purest measures, but in compliance and by necessity, not always as well as they should, but as well as they may; and therefore the civil power is forced sometimes to connive at what it does not approve. But yet these persons are to be governed by conscience; and therefore it is necessary that that part of the public government which is to conduct our consciences more immediately should give a bridle to that liberty, which, by being in some regards necessary,

[c] [Cic. ad Attic., lib. ii. epist. 1.]

would if totally permitted become intolerable. And therefore the spiritual power puts a little myrrh into their wine, and supplies that defect which in the intrigues of human affairs we bring upon ourselves by making unnatural necessities.

§ 32. But then if it be enquired whether it be lawful for the spiritual power by spiritual censures to punish those actions which the civil power permits; I answer, that the church makes laws either by her declarative and direct power, or by a reductive and indirect power; that is, she makes laws in matters expressly commanded by God or forbidden, or else in such things which have proportion, similitudes and analogies to the divine laws. In the first she is the declarer of God's will, and hath a direct power. In the second she hath a judgment of discretion, and is the best judge of fit and decent. If the church declares an act to be against God's commandment, or bound upon us by essential duty, in that case, unless there be error evident and notorious, she is entirely to be obeyed: and therefore the refractory and the disobedient she may easily coerce and punish by her censures, according as she sees it agreeable and conducing to God's glory and the good of souls, although the civil power permits the fact for necessity or great advantages. And the reason is, because as the civil power serves the ends of the republic by impunity and permission, so there is another end to be served which is more considerable, that is, the service of God and the interest of souls, to which she is to minister by laws and punishments, by exhortations and the argument of rewards: and as every power of God's appointment is sufficient for its own end, so it must do its own portion of duty for which so competent provisions are made. And therefore the spiritual power may in this case punish what the civil power punishes not. With this only caution, if the civil power does not forbid the church to use her censures in such a particular case: for if it does, it is to be presumed that such ecclesiastical coercion would hinder the civil power from acquiring the end of its laws, which the ecclesiastical never ought to do; because although her censures are very useful to the ends of the spiritual power, yet they are not absolutely necessary, God having by so many other ways provided for souls, that the church is sufficiently instructed with means of saving souls though she never draw her sword. But the civil power hath not so many advantages.

§ 33. But if the laws of the church are made only by her reductive and indirect power, that is, if they be such that her authority is not founded upon the express law of God, but upon the judgment of discretion, and therefore her laws are concerning decencies and usefulnesses and pious advantages, in this case the church is not easily to proceed to censures, unless it be certain that there is no disservice nor displeasure done to the civil power. For it will look too like peevishness to cross the civil laws where it is apparent there is no necessity, and no warranty from a divine commandment. The church

would not have her laws opposed or discountenanced upon little regards; and therefore neither must she without great necessity do that which will cause some diminution to the civil laws, at least by interpretation.

§ 34. And after all this, if it happens that the civil power and the ecclesiastical command things contrary, there is a fault somewhere, and there is nothing to be done but to enquire on which side God is; for if he be not on the church's side by a direct law in the matter, he is not on the church's side for her relation, but on the king's side for his authority.

From the matter of the former question arises another like it.

QUESTION VI.

Whether in the civil affairs and causes of the ecclesiastical power and persons the presumption ought to lie for the king or for the church.

§ 35. This question must suppose the case to be dubious, and the matter equal on both sides as to the subject matter: for else there needs to be no question, but judgment must be according to the merit of the cause; and it must suppose also that neither of them will yield, but use their own right; for if either did, themselves would make an end of the question; but when both are in pretence, and the pretence is equal in the matter and the argument, and that the cause is to be determined by favour and privilege, whether is to be preferred? I do not ask which is to be preferred in law; for in that question, the laws and customs of a people are the rule of determination: but whether there be in conscience any advantage of presumption due to either.

§ 36. To this I answer, that in the most pious ages of the church the presumption was ever esteemed to lie for the church when the princes were Christians: and when the question is of piety not of authority, of charity not of empire, it is therefore fit to be given to the church, *α*) because if the civil power takes it to itself, it is a judge and a party too. *β*) Because whatever external rights the church hath, she hath them by the donation, or at least enjoys them by the concession of the supreme civil power, who in this case by cession do confirm at least, and at most but enlarge their donative. *γ*) Because the spiritual power is under the king's protection, and hath an equal case with that of widows and orphans: it is a pious cause, it is the cause of the poor and the unarmed. *δ*) The king is better able to bear the loss, and therefore it is a case of equity. *ε*) The church is a relative of God and the minister of religion, and therefore the advantage being given to the church, the honour is done to God; and then on the king's side it would be an act of religion and devotion. *ζ*) If the civil power being judge prefers the

ecclesiastics in the presumption, it is certain there is no wrong done, and none hath cause to complain: but if it be against the ecclesiastics, the case is not so evident, and justice is not so secured, and charity not at all done.

§ 37. And if it be thought that this determination is fit to be given by a churchman; though it be no objection while it is true and reasonable, yet I endeavoured to speak exactly to truth, and for the advantage of the civil power, though the question is decided for the ecclesiastics. For in such cases, as the ecclesiastics will have advantage if they in dubious cases never will contend, so the civil power will ever have the better of it if in these cases they resolve never to prevail.

§ 38. Although these enquiries have carried me a little further than the first intention of the rule, yet they were greatly relative to it. But I shall recall my reader to the sense and duty of it by the words of S. Gregory[c], who says that *Christus imperatori et omnia tribuit, et dominari eum non solum militibus, sed etiam sacerdotibus concessit,* 'Christ hath both given all things to the emperor, and a power of dominion not only over the soldiers, but even over the priests themselves.' And that great wise Disposer of all things in heaven and earth, who makes twins in the little continent of their mother's womb to lie at ease and peace, and the eccentric motions of the orbs, and the regular and irregular progressions of the stars, not to cross or hinder one another, and in all the variety of human actions, cases and contingencies, hath so wisely disposed His laws that no contradiction of chance can infer a contradiction of duty, and it can never be necessary to sin but on one hand or other it may for ever be avoided; cannot be supposed to have appointed two powers in the hands of His servants to fight against or to resist each other: but as good is never contrary to good, nor truth to truth, so neither can those powers which are ordained for good. And therefore where the powers are distinct, they are employed upon several matters; and where they converse about the same matter, as in external actions and persons they do, there one is subject to the other, and therefore can never be against it.

[c] Epist. lxiv. ad Theodorum medicum. [al. lib. iii. epist. 66. tom. ii. col. 678.]

RULE VII.

THE SUPREME CIVIL POWER HATH JURISDICTION IN CAUSES NOT ONLY ECCLESIASTICAL, BUT INTERNAL AND SPIRITUAL.

§ 1. Βασιλεὺς τῶν πρὸς τοὺς θεοὺς κύριος said Aristotle[d]; 'of things belonging to God the king is the governor.' Therefore besides that the supreme civil power is to govern all persons and all actions and ministries which are directly external, it is to be considered that actions internal, as they can be made public, have also influence upon the persons and lives, the fortunes and communities of men; and therefore either are so far forth to be governed by them who are governors of men in their lives and fortunes, in their societies and persons, that they may do good to them, or at least do no hurt.

§ 2. Therefore as the supreme princes and magistrates have in several ages of the church indulged to ecclesiastics a power of civil government, privileges and defensatives *in ordine ad spiritualia*, that is, to enable them with the help of the civil power to advance the interests of religion and the spiritual men, which by evil men is apt to be despised, as all the threatenings of the gospel and the terrors of death and the horrible affrightments of the day of judgment are: so God hath given to the supreme civil power authority over all public religion *in ordine ad bonum temporale*. Princes and states did the other, but God did this. That was well, very well; but this is necessary, and that was not. The reason of both is this, because no external accident can hinder the intentions of God in the effects of religion and the event of souls. Religion thrives as well in a storm and in persecution as in sunshine. God had more summer friends under Constantine, but possibly as many true ones under Diocletian; or if He had not it was men's fault, their weakness, not their necessity. But the civil interest can be really hindered by the intervening of new doctrines and false manners of worship: and the commonwealth if it be destroyed hath no recompense in eternity: and therefore God hath not called them happy when they are troubled, and hath not bidden them to suffer rebellion, or to rejoice when men 'speak evil of dignities,' and He hath not told them that 'great is their reward in heaven;' but the whole purpose and proper end of the government being for temporal felicity, though that temporal felicity is by the wisdom of God made to minister to the eternal, the government expires in this world, and shall never return to look for recompense for its sufferings. But every single man shall; and though temporal power can be taken from princes, yet a man's religion cannot be taken from him: and therefore God hath given to

[d] Polit., lib. iii. cap. 14. [tom. ii. p. 1285.]

princes a supreme power for the ordering of religion in order to the commonwealth, without which it had not had sufficient power to preserve itself; but He hath not given to ecclesiastics a power over princes in matter of government in order to spiritual things, α) because though spiritual things may receive advantage by such powers if they had them, yet they may do as much harm as good, and have done so very often, and may do so again. β) Because God hath appointed to spiritual persons spiritual instruments sufficient to the end of that appointment. γ) Because He hath also established another economy for religion, the way of the cross, and the beaten way of humility, and the defensatives of mortification, and the guards of self-denial, and the provisions of contentedness, and the whole spiritual armour, and prayers and tears, and promises, and His holy Spirit, and these are infinitely sufficient to do God's work, and they are infinitely the better way. δ) Because religion being a spiritual thing can stand alone, as the soul can by itself subsist: and secular violence can no more destroy faith, or the spiritual and true worship of God, than a sword can kill the understanding. ε) Because if God hath given a temporal power to ecclesiastics in order to a spiritual end, then He had set up two supremes in the same affairs, which could never agree but by the cession of one; that is, the two supremes could never agree but by making one of them not to be supreme.

§ 3. And the world hath seen this last particular verified by many sad experiments. For when the Roman emperors residing in the east gave great powers and trusts to the patriarchs of the west, by their spiritual sword they began to hew at the head of gold, and lop off many royalties from the imperial stock. And Leo Iconomachus for breaking down the images of saints felt their power, for they suffered not the people to pay him tribute in Italy, threatening to interdict them the use of sacraments and public devotions if they did. But as soon as ever they began by spiritual power to intermeddle in secular affairs, they quickly pulled the western empire from the east, and in a convenient time lessened and weakened that of the west. For pope John the third combined with Berengarius and Adalbar his son against the emperor Otho the great, and they must pretend themselves to be kings of Italy. Pope John the eighteenth made a league with Crescentius, and stirred up the people against Otho the third. Pope Benedict the ninth excited Peter of Hungary to pretend to the empire, only to hinder Henry surnamed Niger from entering into Italy to repeat his rights. And all the world knows what Gregory the seventh did to Henry the fourth; how he first caused Rodulph of Suevia, and afterwards Ecbert of Saxony, to fight against him: and here their great quarrel was about the power of choosing the pope. Then they fell out about the collation of bishoprics; for which cause pope Gelasius the twelfth caused the archbishop of Mentz to rebel against Henry the fifth; and there

the pope got the better of him, and by the aid of his Norman forces which he had in Sicily beat him into compliance. Then they fell out about some fees of the empire; and Innocent the second raised up Roger the Norman against Lotharius the twelfth about the duchy of Poüille; and S. Bernard being made umpire in the quarrel, the pope got a share in Bavaria; for whoever lost, *signor papa*, like the butler's box[e], was sure to get, by the advantage of his supreme conduct of religion which by this time he got into his hands.

§ 4. And now he improved it providently. For the same Innocent stirred up Guelphus duke of Bavaria against Conrad the third; and thence sprang that dismal and bloody faction between Guelphs and Ghibellines. But what should I reckon more[f]? I must transcribe the annals of Germany to enumerate the hostilities of the Roman bishops against the emperors their lords, when they got the conduct and civil government of religious affairs into their power. Frederic Barbarossa, Henry the sixth, his brother Philip, Frederic the second, Henry the seventh, Frederic of Austria, Lewis of Bavaria, Sigismond, Frederic the third, felt the power of a temporal sword in a religious scabbard: and this was so certain, so constant a mischief, that when the pope had excommunicated eight emperors, and made the temporal sword cut off them whom the spiritual sword had struck at, the emperors grew afraid. And Radulph of Hapsburg when he was chosen emperor durst not go into Italy, which he called the lion's den, because the entrance was fair, but few returning footsteps were espied. And it grew to be a proverb, saith Guicciardine[g], *Proprium est ecclesiæ odisse Cæsares*, 'the church hates Cæsar;' and the event was that which Carion[h] complained of, *Sceleribus pontificum hoc imperium languefactum est*, by the wickedness of the bishops of Rome the Roman empire is fallen into decay.

§ 5. These instances are more than enough to prove that if religion be governed by any hand with which the civil power hath nothing to do, it may come to pass that the civil power shall have no hands at all, or they shall be in bands. The consequence of these is this, that if the supreme civil power be sufficient to preserve itself, it can provide against the evil use of the spiritual sword, and consequently can conduct all religion that can by evil men be abused, so as to keep it harmless. If by communications the bishop can disturb the civil interest, the civil power can hold his hands that he shall not strike with it, or if he does, can take out the temporal sting, that it shall not venom and fester. If by strange doctrines the ecclesiastics can aliene the hearts of subjects from their duty, the civil power can forbid those doctrines to be preached. If the canons

[e] [See Brand, Popular Antiquities, 'The Christmas-box,' vol. i. p. 496. ed. 8vo. Lond. 1849.]

[f] Vide Luitprand., lib. vi. c. 6. [fol. 38. ed. fol. Par. 1514.]—Cuspinian, [De Cæsar., p. 253. fol. Franc. 1601.]—Theodoric. a Niem, in vita Othon. III. [lib. iii. capp. 10, 11. p. 158. 8vo. Argent. 1609.]

[g] Lib. iv. chron. [vid. lib. xvi. p. 594. ed. Lat. fol. Bas. 1566.]

[h] [vid. chron., lib. iv. p. 636. ed. 8vo. Gen. 1625.]

of the church be seditious or peevish or apt for trouble, the civil power can command them to be rescinded, or may refuse to verify them, and make them into laws. But that we may not trust our own reason only, I shall instance in the particulars of jurisdiction, and give evident probation of them from the authority of the best ages of the church.

§ 6. And first in general, that kings, or the supreme civil power, is by God made an overseer, a ruler, a careful father, a governor, a protector and provider for His church, is evident in the scriptures, and the doctrine of the primitive ages of the church. *Nutritii et patres ecclesiæ* is their appellative which we are taught from scripture, 'nursing fathers of the church.' *Pastores*, that's the word God used of Cyrus the Persian, 'Cyrus My shepherd:' and when the spirit of God by David calls to kings and princes of the earth to 'kiss the Son lest He be angry,' it intends that as kings they should use their power and empire in those things in which the Son will be worshipped by the children of men. For besides the natural and first end of government, which is temporal felicity, of which I have already spoken, there is also a supernatural, the eternal felicity of souls; and to this civil government does minister by the economy and design of God: and therefore it was well said of Ammianus[i], *Nihil aliud est imperium (ut sapientes definiunt) nisi cura salutis alienæ.* It is true in both senses; 'empire is nothing else (as wise men define it) but a power of doing good by taking care for the salvation of others.' To do them good here, and to cause them to do themselves good hereafter, is the end of all government. And the reason of it is well expressed by the emperor Theodosius junior to S. Cyril[j], *Quandoquidem ut vera religio justa actione perficitur, ita et respublica utriusque ope nixa florescit*, as 'true religion is perfected by justice, so by religion and justice the republic does flourish;' and therefore he adds, *Deus opt. max. pietatis et justæ actionis quoddam quasi vinculum nos esse voluerit*, 'the emperor is by the divine appointment the common band of justice and religion.'

§ 7. In pursuance of this truth, Eusebius[k] tells that Constantine the great was wont to say to the bishops concerning himself, *Vos intra ecclesiam, ego extra ecclesiam a Deo episcopus constitutus sum*, 'you within the church walls and I without, but both of us are appointed by God to be bishops or overseers of His saints and servants.' And in the edict of Valentinian and Martian, which approves the acts of the council of Chalcedon, they are both called *inclyti pontifices*, 'illustrious bishops:' and the emperor Leo III.[l] in his epistle to Gregory the bishop of Rome says of himself ὅτι βασιλεὺς καὶ ἱερεύς εἰμι, 'I am both a king and a priest;' meaning in office, not in order; in government, not in ministries. These and

[i] Lib. xxxix. [lib. xvii. cap. 5.]
[j] Apud Cyril., epist. xvii. [tom. ii. p. 22. ed. Gentian. Hervet., fol. Par. 1604.]
[k] De vita Constant., lib. iv. [cap. 24.]
[l] [Citante Gregorio II. epist. ii. inter concill. Harduin., tom. iv. col. 13 D.]

such like words are often used in the letters enterchanged between the princes and the bishops in the ancient church, of which that of Leo the Roman bishop concerning the French capitulars is remarkable, writing to Lotharius[m], *De capitulis, vel præceptis imperialibus vestris vestrorum pontificum prædecessorum irrefragabiliter custodiendis et conservandis, quantum valuimus et valemus, Christo propitio, et nunc et in ævum nos conservaturos modis omnibus profitemur.* It was a direct oath of supremacy;—'Concerning the capitulars or imperial precepts given by you and your predecessors who were bishops, (viz. in their power and care over churches,) we through the assistance of Christ promise as much as we are able to keep and to conserve them for ever.' The limit of which power is well explicated by S. Austin[n] in these words, *Quando imperatores veritatem tenent, pro ipsa veritate contra errorem jubent; quod quisquis contempserit, ipse sibi judicium acquirit,* 'when the emperors are Christians and right believers, they make laws for the truth and against false doctrines; which laws whosoever shall despise gets damnation to himself.'

§ 8. For if we consider that famous saying of Optatus[o], that *ecclesia est in republica, non respublica in ecclesia,* 'the church is in the commonwealth, not the commonwealth in the church,' and the church is not a distinct state and order of men, but the commonwealth turned christian, that is, better instructed, more holy, greater lovers of God, and taught in the knowledge of our Lord Jesus; it is not to be imagined that the emperors or supreme governors should have the less care and rule over it by how much the more it belongs to God. This fancy first invaded the servants when they turned Christians; they thought their masters had then less to do with them. The apostle tells them as in the case of Onesimus, that it is true, they ought to love them better, but the other were not the less to be obedient; only there was this gotten by it, that the servants were to do the same service for the Lord's sake which before they did for the law's. But it is a strange folly to imagine that because a man hath changed his opinion he hath therefore changed his relation; and if it were so, he that is weary of his master may soon change his service by going to another tutor. Religion establishes all natural and political relations, and changes none but the spiritual; and the same prince that governs his people in the time of the plague is to govern them when they are cured; and the physician that cured them hath got no dominion over them, only *in regimine salutis* he is principal, he is to govern their health. The cases as to this are parallel between the soul and the body. And therefore the emperor Constans[p] declared his power and his duty too, *de omnibus curam agere et intendere quæ respiciunt ad utilitatem christianissimæ nos-*

[m] [Apud Gratian. decret., part. 1. dist. x. cap. 9. col. 36.]

[n] Epist. clxvi. [al. epist. cv. tom. ii. col. 299 A.]

[o] [De schism. Donat. contr. Parmen., lib. iii. cap. 3. p. 56.]

[p] In concil. Roman. sub Martino I. [al. concil. Lat., tom. iii. col. 823 C.]

træ reipublicæ, 'to take care and to intend all things which regard the advantage of our most christian commonwealth:' and Aimonius[q] tells of king Clodoveus, that in one of the councils of Africa held at Clupea he described his office and duty by these two summaries, *publicis rebus consultores advocare, et ea quæ Dei et sanctorum ejus sunt disponere;* 'to consult about public affairs of the commonwealth, and to dispose of those things which belong to God and to His saints.'

§ 9. But the consideration of the particulars will be more useful in this enquiry, and first

THE SUPREME CIVIL POWER HATH AUTHORITY TO CONVENE AND TO DISSOLVE ALL SYNODS ECCLESIASTICAL.

§ 10. This appears 1) in that all the first councils of the church after the emperors were christian were convocated by their authority. The council of Nice was called by Constantine, as is affirmed by Eusebius[r], Ruffinus[s], Sozomen[t], and Theodoret[u]: and when the Eusebians had persuaded Constantine to call a council at Tyre against Athanasius, the prince understanding their craft and violence called them from Tyre to Constantinople[x]: and by the same emperor there was another council called at Arles. The council at Sardica in Illyria was convened by the authority of the emperors Constans and Constantius, as the fathers of that synod themselves wrote in their letters to the Egyptians and Africans[y]: and Liberius the bishop of Rome, with many other bishops of Italy, joined in petition to Constantius to convocate a council at Aquileia; not to suffer them to do it, but that he would, for to him they knew it only did belong. Theodosius[z] the emperor called the second general council at Constantinople, as Socrates, Sozomen, and Nicephorus relate: and the fathers of the council[a] write in their synodical constitutions, with this expression added, *Ea quæ acta sunt in sancto concilio ad tuam referimus pietatem,* 'whatsoever was done in that synod was wholly referred and submitted to the prince's piety.' The great Ephesine council, which was the third œcumenical, was convened by Theodosius junior[b], *ex proprio munere et officio, et ex animi sui deliberatione,* so himself affirms, 'out of his own free choice, according to his office and his duty.' But his rescript by which he convened the council is a most admirable letter, and contains in it a full testimony of the truth of this whole rule, and does excellently enumerate and

[q] Lib. iv. cap. 41. [De gest. Franc., p. 184. fol. Par. 1603.]
[r] De vita Constant., lib. iii. [cap. 6.]
[s] Lib. i. hist. [cap. 1.]
[t] Lib. i. [cap. 17.]
[u] Lib. i. hist. [cap. 7.]
[x] Apud Athanas., apol. ii. [contr. Arian., tom. i. p. 201, 2.]
[y] ['Ad omnes ubique episcopos.'] apud Athanas. ibid. [p. 162 B.]
[z] Theodor., hist. eccles., lib. ii. c. 16. [al. 13.] in dial. et Liberius in epist. ad Hosium Cordub. apud Baron., tom. iii. A.D. CCCLIII. n. 19. [p. 630.]
[a] Synod. constit. libell. [tom. i. col. 807 A.]
[b] Apud Cyril., ep. iv. [p. 10. ed. Gentian. Hervet.]

imply all the parts of the imperial jurisdiction in causes of religion. The sum of which are in the preface of that rescript in these words[c], 'Our commonwealth depends upon piety (or religion) towards God, and between them both there is great cognation and society; for they agree together, and grow by the increase of one another: so that true religion does shine by the study of justice, and the commonwealth is assisted by them both. We therefore being placed in the kingdom by God, having received from Him the care both of the religion and the prosperity of the subject, we have hitherto endeavoured by our care and by our forces to keep in perpetual union: and for the safety of the republic we are intent to the profit of our subjects, and diligently watch for the conservation of true religion; but especially we strive that they may live holily, as becomes holy persons, taking care, as it befits us, even of both (for it is impossible we should take good care of one if we neglect the other). But above the rest, we are careful that the ecclesiastical state may remain firm, so as is fit to relate to God, and to be in our time, and may have tranquillity by the consent of all men, and may be quiet by the peace of the ecclesiastic affairs; and that true religion may be kept unreprovable, and the lives of the inferior clergy and the bishops may be free from blame. This is the sum of his duty, and the limit of his power, and the intention of his government.' And to these purposes he called a council, threatening punishment to any prelate who was called, if he neglected to come. If the emperor took more upon him than belonged to him, he was near a good tutor that could well have reproved him, the fathers of the Ephesine council; but if he took upon him but what was just, this testimony alone is sufficient in this whole question. But he ended not so, but shortly after called another council in the same place[d], against the will of pope Leo, who yet was forced to send his deputies to be assistant at it. But that council had an ill end: and to repair the wounds made to truth by it, pope Leo petitioned the emperor for another to be held in Italy[e]. But the emperor was then not much in love with councils, having been so lately deceived by one; and therefore put it off and died: and his successor Martianus called one at Nice, but changing his mind had it kept in Chalcedon. I shall proceed no further in particular, but account it sufficient what cardinal Cusanus[f] acknowledges.—*Sciendum est quod in universalibus octo conciliis semper invenio imperatores et judices suos cum senatu primatum habuisse.* For this is more than the mere power of calling them; for that he might do upon many accounts: but 'the emperors and his judges and council always had the primacy in the eight general councils.'

§ 11. 2) As the emperors did convene, so they did dismiss the eccle-

[c] Epist. xvii. apud Cyrillum. [p. 22, et in concill., tom. i. col. 1343.]

[d] In concil. Chalced. act. i. scribens ad Dioscorum Alex. [tom. ii. col. 71.]

[e] Leo, epist. xxi. tom. i. epist. R.R. P.P. [in concill., tom. ii. col. 26 C.]

[f] De concord. cathol., lib. iii. cap. 16. [p. 797.]

siastical conventions; as appears in the acts of the Ephesine council, where the fathers petition the emperor that he would free them from that place, and give them leave to wait upon him to see his face, or at least he would dismiss them and send them home to their own churches[g]. The same petition was made by the bishops at Arimi-num to the emperor Constantius[h], and by the fathers at the council of Chalcedon[i] to Martianus. But these things did never please the Italians after their patriarch began to set up for ecclesiastical monarchy, and they, as soon as they could, and even before their just opportunities, would be endeavouring to lessen the imperial power and to take it into their own hands. But this is one of the things that grew to an intolerable mischief; and was not only against the practice of the best ages, and against the just rights of emperors, but against the doctrine of the church.

§ 12. For S. Hierome reproving Ruffinus, who had quoted the authority of some synod, I know not where, S. Hierome[k] confutes him by this argument, *Quis imperator jusserit hanc synodum congregari?* There was no such synod, for you cannot tell by what emperor's command it was convened. To this purpose there was an excellent epistle written by certain bishops of Istria to Mauritius the emperor[l], enumerating from the records of the church the convention of ecclesiastical councils to have been wholly by the emperor's disposition; in which also they dogmatically affirm, *Semper Deus præsentia christianorum principum contentiones ecclesiasticas sedare dignatur*, 'God does always vouchsafe to appease church-quarrels by the presence of christian emperors:' meaning that by their authority the conciliary definitions passed into laws. But who please to see more particulars relating to this enquiry, may be filled with the sight of them in the whole third book of William Ranchin his review of the council of Trent.

THE SUPREME CIVIL POWER HATH A POWER OF EXTERNAL JUDGMENT IN CAUSES OF FAITH.

§ 13. This relies upon the former reasons, that since propositions of religion and doctrines of theology have so great influence upon the lives of men, upon peace and justice, upon duty and obedience, it is necessary that the supreme civil power should determine what doctrines are to be taught the people, and what to be forbidden. The princes are to tell what religions are to be permitted and what not: and we find a law of Justinian[m] forbidding anathematisms to be pronounced against the Jewish Hellenists; for the emperors did not only permit false religions by impunity, but made laws even for

[g] Vide etiam Baron., tom. v. A.D. CCCCXXXI. n. 103. [p. 596.]

[h] Theod. l. ii. [c. 19, 20.]

[i] Fine 6tæ act. [tom. iv. col. 490.]

[k] Apol. ad Ruffin., lib. ii. [tom. iv. part. 2. col. 415.]

[l] Apud Baron., A.D. DXC. tom. viii. n. 41. [tom. x. p. 503. ed. fol. Luc. 1738, 57.]

[m] Novel. 146. [Authent. coll. ix. tit. 29. cap. 1.]

the ordering their assemblies, making ecclesiastical laws for enemies of true religion: so necessary it is for princes to govern all religion and pretences of religion within their nations. This we find in the civil law, in the title of the code *de Judæis*, in many instances. A law was made by Justinian also that none should be admitted into the Jewish synagogues that denied angels, or the resurrection, or the day of judgment. Thus the civil power took away the churches from the Maximianistæ because they were an under sect of the Donatists condemned by their superiors. But then that the christian princes did this and might do this and much more in the articles of true religion, is evident by many instances and great reason.

§ 14. There is a title in the first book of the Code[n], *Ne sacrosanctum baptisma iteretur*, against the anabaptists[o]. Charles the great made a decree against the worshipping of images, and gave sentence against the second Nicene council in that particular: and Sozomen[p] reports that Constantine cut off unprofitable questions, to prevent schisms in the church; which example our kings of England have imitated by forbidding public preachers or divines in schools to meddle in the curious questions of predestination. Thus the public laws of a nation often declare who are and who are not heretics: and by an act of parliament in England they only are judged heretics who for such were condemned by the four general councils[p]. Upon this account many princes have forbidden public disputations in matters of religion: to this purpose there was a law of Leo and Anthemius[q], *l.* '*Qui in mon.*,' *C. de episc. et clericis*;' and Andronicus the emperor[r] hearing some bishops disputing with some subtilty upon those words "My Father is greater than I,' threatened to throw them into the river if they would not leave such dangerous disputations. Heraclius the emperor forbad any of those nice words concerning Christ to be used: some did use to say that in Christ there was a single energy, some said there was a double: but the emperor determined the question well, and bade them hold their peace and speak of neither: for, as Sisinnius said to Theodosius, *disputando de sacris accendi tantum contentionem*, 'there is nothing got by disputations but strife and contention:' and therefore princes are the best moderators of churchmen's quarrels, because princes are bound to keep the peace. And consonantly to this Isidore[s] spake well, *Sane per regnum terrenum cœleste regnum proficit, ut qui intra ecclesiam positi contra fidem et disciplinam ecclesiæ agunt, rigore principum conterantur, ipsamque disciplinam quam ecclesiæ humilitas exercere non prævalet, cervicibus superborum potestas principalis im-*

[n] [lib. i. tit. 6.]
[o] Vide l. 'Nemo,' ff. de summa Trinitate. [Cod. Justin., lib. i. tit. i. l. 4.]
[p] [See vol. v. p. 197, and vi. 360.]
[q] [Cod. Justin., lib. i. tit. 3. l. 29.]
[r] Nicet. Choniat. [annal. in Andron., lib. ii. p. 212 fin. fol. Par. 1647.]
[s] [Gratian. decret., part. 2. caus.] 23. q. 5. c. 'Principes,' [cap. 20. col. 1465.]

ponat: the civil power advances the interests of the heavenly kingdom by punishing them who sin against the faith and discipline of the church; if they be *intra ecclesiam,* 'within the church,' their faith and manners both are subject to the secular judgment.

§ 15. But not only so, but they are to take care to secure and promote the interest of truth: for though, as S. Paul says, "doubtful disputations do engender strife," yet we must "contend earnestly for the faith;" with zeal, but yet with meekness too: and therefore that matters of faith and doctrines of good life be established, it is part of the prince's duty to take care[t]. According to which we find that when a rumour was spread that brought pope Pelagius into suspicion of heresy, king Childebert sent Rufinus to him to require him either to recite and profess the tome of S. Leo in which there was a good confession of faith, or else that he should do the same thing in his own words. Pope Pelagius sent this answer[u]: *Satagendum est ut pro auferendo suspicionis scandalo obsequium confessionis nostræ regibus*[x] *ministremus, quibus etiam nos*[y] *subditos esse sacræ scripturæ præcipiunt,* 'we must take care that for the avoiding suspicion we exhibit to kings the duty of our confession: for to them the holy scriptures command even us to be obedient.' And not only for the faith of bishops and even of popes, but for their manners also, kings were to take care, and did it accordingly; Justinian made laws that bishops should not play at dice, nor be present at public spectacles; and he said of himself[z], *maximam habere se sollicitudinem circa vera Dei dogmata, et circa sacerdotum honestatem,* 'that his greatest care was about the true doctrines of God, and the good lives of bishops.'

§ 16. I do not intend by this, that whatsoever article is by princes allowed is therefore to be accounted a part of true religion; for that is more than we can justify of a definition made by a synod of bishops: but that they are to take care that true doctrine be established; that they that are bound to do so must be supposed competent judges what is true doctrine, else they guide their subjects, and somebody

[t] Imperator, ut communis ἐπιστημονάρχης existens et nominatus, synodalibus præest sententiis et robur tribuit, ecclesiasticos ordines componit, et legem dat vitæ politiæque eorum qui altari serviunt... Et rursus ut uno verbo dicam, solo sacrificandi excepto ministerio, reliqua pontificialia privilegia imperator repræsentat.—Demetr. Chomaten. in resp. Orien. [Respons., lib. v. apud Leunclav. Jus Græco-Roman., tom. i. p. 317. ed. fol. Franc. 1596.] Evagrius [i. e. Basiliscus apud Evagr.] Leonis imp. concilii Chalced. approbationem vocat decisionem de fide, lib. iii. c. 4. et c. 5. Videat lector totum hujus rei processum ex l. 1. Heraclii, incip. 'Cum sanctus,' inter constit. imperial. [in corp. jur. civil. ed. Gothofred.] Cum S. (inquit) Sophronius, tunc summo sacerdotio fungens Hierosolymis, subjectis sibi sacerdotibus convocatis synodice demonstrasset eos qui unam in duabus Christi naturis voluntatem atque energiam affirmarent palam unam quoque naturam statuere, eique Johannes papa Romanus assensus esset, imperator edictum proponit, neque singularem, neque duplicem in Christo energiam esse asserendam.

[u] 25. q. 1. c. 'Satagendum.' [cap. 10. col. 1567.]

[x] [al. 'legibus.']

[y] [al. 'eos.']

[z] Novel. cxxiii. cap. 10. [Authent. coll. ix. tit. 6.]

else rules them, and then who is the prince? By what means and in what manner the civil power is to do this I am to set down in the next rule; but here the question is of the power, not of the manner of exercising it: and the answer is, that this power of judging for themselves and for their people is part of their right; that no article of religion can become a law unless it be decreed by God or by the prince; that the bishop's declaration is a good indication of the law of God, but that the prince's sanction makes it also become a law of the commonwealth: that the prince may be deceived in an article of religion is as true as that he may be deceived in a question of right, and a point of law: yet his determination hath authority, even when a better proposition wants it; that error must serve the ends of peace, till by the doctrines of the wiser ecclesiastics the prince being better informed, can by truth serve it better.

RULE VIII.

THE SUPREME CIVIL POWER IS TO GOVERN IN CAUSES ECCLESIASTICAL BY THE MEANS AND MEASURES OF CHRIST'S INSTITUTION, THAT IS, BY THE ASSISTANCE AND MINISTRIES OF ECCLESIASTICAL PERSONS.

§ 1. KINGS are supreme judges of the law; for *cujus est loqui ejus est interpretari*, 'he that speaks, best knows his own meaning:' and the lawgiver is certainly his own best interpreter. But in cases where there is doubt, the supreme civil power speaks by them whose profession it is to understand the laws. And so it is in religion. The king is to study the law of God; *nec hoc illi dictum ut totus ab alieno ore pendeat, ipseque a se nihil dijudicet,* said that learned prelate of Winchester[a], 'not that he should wholly depend in religion upon the sentences of others, but be able of himself to judge.' But where there is difficulty, and that it be fit that the difficulty be resolved, there the supreme civil power is to receive the aid of the ecclesiastic, from whose mouth the people are to require the law, and whose lips by their office and designation are to preserve knowledge. The doctors of the Jews tell that when Jephthah had made a rash vow, he might have been released if he had pleased: for if a horse had first met him, he had not been bound to have offered it to God, but it must have been sold, and a sacrifice be bought with the price; and much more must a man or a woman have been redeemed. But because Jephthah was a prince in Israel, he would not go to Phineas the high-priest to have had his vow interpreted, commuted, or released. Neither would Phineas go to him, because he was not to

[a] [Lancelot Andrewes,] Tortur. tort. [p. 381. 4to. Lond. 1609.]

offer his help till it was implored. Phineas did not go to Jephthah, for he had no need, he had no business: and Jephthah would not go to Phineas because he was the better man. In the mean time the virgin died, or, as some say, was killed by her father: but both prince and priest were punished, Jephthah with a palsy, and Phineas was deprived of the spirit of God. For when the prince needs the priest he must consult him; and whether he consults him or no, the priest must take care that no evil be done by the prince, or suffered by him for want of counsel.

§ 2. But the prince's office of providing for religion and his manner of doing it in cases of difficulty are rarely well discoursed of by Theodosius the younger in a letter of his to S. Cyril, of which I have formerly mentioned some portions, *Pietatis doctrinam in sacra synodo in utramque partem ventilatam eatenus obtinere volumus quatenus veritati et rationi consentaneum esse judicabitur;* 'the doctrine of godliness shall be discussed in the sacred council, and it shall prevail or pass into a law so far as shall be judged agreeable to truth and reason;' where the emperor gives the examination of it to the bishops to whose office and calling it does belong: but the judgment of it and the sanction are the right of the emperor, who would see the decrees should be established if they were true and reasonable. The judgment I say was the emperor's, but in his judgment he would be advised, taught, and established by his bishops. *Sed nec eam doctrinam indiscussam patiemur; cui dijudicandæ eos præfici oportet qui sacerdotiis ubivis gentium præsident, per quos et nos quoque in veritatis sententia stabilimur, et magis magisque identidem stabiliemur;* 'that doctrine that is in question we will not suffer to escape examination; but those shall be presidents of the judgment who in every nation are the appointed bishops, by whom we also ourselves are confirmed in the true religion, and hope every day to be more and more established.'

§ 3. When the supreme power hath called in the aid and office of the ecclesiastic, good princes use to verify their acts accordingly, to establish their sentences, to punish the convict, to exterminate heretics and suppress their doctrines. Thus Honorius and Arcadius the emperors by an edict repressed Pelagius and Cœlestius, whom the bishops had condemned: Constantine, after the sentence of the Nicene fathers against Arius, banished him. Theodosius the elder[b], having diligently conferred with the orthodox bishops, and heard patiently what the others could say, by a law forbad them to have public assemblies who denied the consubstantiality of the Son with the Father. *Per consilium sacerdotum et optimatum ordinavimus, constituimus, et diximus;* it was the style of king Pepin in the council of Soissons[c]. And of this nature the instances are very numerous. For *semper studium fuit orthodoxis et piis imperatoribus vro tempore exortas hæreses per congregationem religiosissimorum*

[b] Sozom., l. vii. c. 12. [p. 293.] [c] [can. iii. tom. iii. col. 1933.]

archiepiscoporum amputare, et recta fide sincere prædicata in pace sanctam Dei ecclesiam custodire, said Theodorus Silentiarius[d]; 'all the pious and orthodox emperors did use this instrument and manner of proceeding, for the cutting off heresies, and the sincere publication of the faith, and the conservation of the church in peace.'

§ 4. But that this manner of empire may not prejudice the right of empire, it is to be observed that in these things the emperors used their own liberty, which proved plainly they used nothing but their own right. For sometimes they gave toleration to differing sects, sometimes they gave none; sometimes they were governed by zeal, and sometimes by gentle counsels, only they would be careful that the disputes should not break the public peace; but for their punishing recusants and schismatics they used their liberty. So we find in the acts of the great Ephesine council[e], that Theodosius the second resolved of one, but not upon the other. *At vero sive illi veniam impetraturi sint qui a patribus victi discedent, sive non, nos sane civitates simul et ecclesias conturbari nequaquam sinemus,* 'whether those who are convict of heresy by the fathers shall be pardoned, yea or no, yet we will be sure not to suffer the republic or the churches to be disturbed.'

§ 5. This I observe now in opposition to those bold pretences of the court of Rome, and of the presbytery, that esteem princes bound to execute their decrees, and account them but great ministers and servants of their sentences. Now if this be true, then princes must confirm all that the clergy decrees: if all, then the supreme prince hath less than the meanest of the people, not so much as a judgment of discretion; or if he have, it is worse, for he must not use his discretion for the doing of his duty, but must by an implicit faith and a blind brutish obedience obey his masters of the consistory or assembly. But if he be not bound to confirm all, then I suppose he may choose which he will, and which he will not: and if so, it is well enough: for then the supreme judgment and the last resort is to the prince, not to his clerks. And that princes are but executioners of the clergy's sentences is so far from being true, that we find Theodosius refusing to confirm the acts of the great Ephesine council[f]: for having been informed (though falsely) that affairs were carried ill, he commanded the bishops to resume the question of the Nestorians: for their acts of condemnation against them he made null, and commanded them to judge it over again, and that till they had done so they should not stir to their bishoprics. The ministry was the bishops' all the way, but the external judgment and the legislative was the prince's. So Charles the great[g] reformed the church, *Episcopos congregavi, &c.* 'I convocated the bishops to

[d] In 5ta synod. gen. Constant. ii. [tom. iii. col. 54. et idem Græce, col. 321.]
[e] [part. i. cap. 18. tom. i. col. 1342.]
[f] Apud acta concil. Ephes. in liter. Theod. ad synod. [tom. i. col. 1537.]
[g] Apud Surium die 5 Jun. [in vit. Bonifac., cap. 33. p. 66. fol. Col. Agr. 1618.]

counsel me how God's law and christian religion should be recovered. Therefore by the counsel of my religious prelates and my nobles we have appointed bishops in every city, and Boniface their archbishop, and appoint that a synod shall be held every year, that in our presence the canonical decrees and the rights of the church may be restored, and christian religion may be reformed.' But because this must be evident as a consequent of all the former discourses upon this question, it will be sufficient now to sum it up with the testimony of S. Austin writing to Emeritus the Donatist[h]: *Nam et terrenæ potestates cum schismaticos persequuntur ea regula se defendunt, quia dicit apostolus, Qui potestati resistit, Dei ordinationi resistit; non enim frustra gladium portat,* 'when the civil power punishes schismatics they have a warrant from an apostolical rule, which says, He that resists, resists the ordinance of God: for they bear not the sword in vain.' It is not therefore by a commission or a command from the church that they punish schismatics, but *constituunt adversus vos pro sua solicitudine ac potestate quod volunt,* 'they decree what they please against them according to their own care and their own power.'

§ 6. So that when it is said that princes are to govern their churches by the consent and advice of their bishops, it is meant not *de jure stricto,* but *de bono et laudabili*: it is fit that they do so, it is the way of Christ's ordinary appointment: "He that heareth you heareth Me:" and to them a command is given, to "feed" all "the flock of Christ." In pursuance of which it was a famous rescript of Valentinian the first, cited by S. Ambrose[i], *In causa fidei vel ecclesiastici alicujus ordinis eum judicare debere qui nec munere impar sit, nec jure dissimilis.* These are the words of the rescript: that is, he would that bishops should judge of bishops: and that in causes of faith or the church their ministry should be used, whose persons by reason of the like employment were most competent to be put in delegation. But to the same purpose more of these favourable edicts were made in behalf of the church by Theodosius and Valentinian the second[j], by Arcadius, Honorius, and Justinian[k]: and indeed besides that it is reasonable in all cases, it is necessary in very many; because bishops and priests are the most knowing in spiritual affairs, and therefore most fit to be counsellors to the prince, who oftentimes hath no great skill, though he have supreme authority. I remember that when Gellius the prætor was sent proconsul into Greece[l], he observed that the scholars at Athens did perpetually wrangle, and erect schools against schools, and divided their philosophy into sects; and therefore sending for them, persuaded them

[h] Epist. clxiv. [al. lxxxvii. tom. ii. col. 211 B.]

[i] Epist. xxxii. [al. xxi. tom. ii. col. 860 C.]

[j] L. 1. Cod. Theod. de relig. [lib. xvi. tit. 11.] Novel. Valen., de Episc. Jud. l. 'Graviter.' ibid. [tit. 12. l. 3.]

[k] Novel. 89. [potius 86. authent. coll. vi. tit. 15.]

[l] Cicer. lib. i. de leg. [cap. 20.]

to live quietly and peaceably, and to put their questions to reference or umpirage, and in it offered his own assistance: but the scholars laughed at his confident offer to be a moderator in things he understood no more than his spurs did. He might have made them keep the peace, and at the same time make use of their wit and his own authority. And although there may happen a case in which princes may, and a case in which they must refuse to confirm the synodical decrees sentences and judgments of ecclesiastics: yet unless they do with great reason and upon competent necessity, they cannot do it without great scandal, and sometimes great impiety. But of this I shall discourse in the next chapter. For the present, I was to assert the rights of princes, and to establish the proper foundation of human laws; that the conscience may build upon a rock, and not trust to that which stands upon sand and trusts to nothing.

§ 7. I have been the larger upon these things because the adversaries are great and many, and the pretences and the challenges high, and their opposition great and intricate, and their affrightments large; for they use something to persuade and something to scare the conscience. Such is that bold saying of pope Leo the tenth[m], *A jure tam divino quam humano laicis potestas nulla in ecclesiasticas personas attributa est,* 'both by divine and human laws ecclesiastics are free from all secular power.' But fierce and terrible are the words of the extravagant '*Unam sanctam,*'—*Porro subesse Romano pontifici omnem humanam creaturam declaramus, dicimus, definimus et pronunciamus omnino esse de necessitate salutis,* 'that every man should be subject to the bishop of Rome, we define, we say, we declare and pronounce to be altogether necessary to salvation.' This indeed is high, but how vain withal and trifling and unreasonable I have sufficiently evidenced. So that now the conscience may firmly rely upon the foundation of human laws, and by them she is to be conducted not only in civil affairs, but in ecclesiastical, that is, in religion as well as justice: and there is nothing that can prejudice their authority, unless they decree against a law of God; of which because ecclesiastical persons are the preachers and expositors by ordinary divine appointment, princes must hear bishops, and bishops must obey princes: or because *audire et obaudire,* to 'hear' and to 'obey' have great affinity, I choose to end this with the expression of abbot Berengar[n] almost eleven hundred years ago, *Sciendum est quod nec catholicæ fidei nec christianæ contrarium est legi, si ad honorem regni et sacerdotii rex pontifici et pontifex obediat regi,* 'it is neither against the catholic faith nor the christian law that the prince obey the bishop, and the bishop obey the prince:' the first is an obedience of piety, and the latter of duty; the one is justice and the other is religion.

[m] Concil. Later. sub Leon. x. [sess. ix. tom. ix. col. 1756 D.]

[n] [Berengosius.] lib. de myster. sign., in biblioth. SS. PP. [max. bibl. vet. patr., tom. xii. p. 374 H.]

CHAP. IV.

OF THE POWER OF THE CHURCH IN CANONS AND CENSURES, WITH THEIR OBLIGATIONS AND POWERS OVER THE CONSCIENCE.

SECT. I.—OF THE POWERS OF THE CHURCH.

RULE I.

THE WHOLE POWER WHICH CHRIST HATH LEFT IN ORDINARY TO HIS CHURCH IS MERELY SPIRITUAL.

§ 1. THAT there are great things spoken by the doctors of the primitive church of the ecclesiastical or spiritual power is every where evident, and that there are many expressions which prefer it above the secular; all which I shall represent instead of others in the words of S. Chrysostom[a], because of them all he was the most eloquent, and likeliest in the fairest imagery to describe the powers of his order: "Others are the limits of the kingdom, others of the priesthood; for this is greater than that: and you must not estimate it by the purple and the gold. The king hath allotted to him the things of this world to be administered, but the right of priesthood descendeth from above: 'Whatsoever ye shall bind on earth shall be bound in heaven.' To the king is committed what is here below; to me, that is to the bishop, things celestial. The bodies are entrusted to princes, but the souls to bishops. The king remits the guilt of bodies, but the bishop the guilt of sins. The prince compels, the bishop exhorts. He governs by necessity, but we by counsel; he hath sensible armour, but we spiritual weapons; he wageth war against the barbarians, but we against the devil. Here then is a greater principality. For which cause the king submits himself to the priest's hand, and every where in the Old testament the priests did anoint kings." Where by the way, though it be not exactly true that the kings of Israel and Judah were always anointed by priests, but sometimes by prophets who were no priests, as in the

[a] Homil. iv. in verb. Isaiæ. ['Vidi Dominum,' tom. vi. p. 127.]

case of Jehu[b]; yet supposing all that, the discourse is true enough, and the spiritual power in relation to a nobler object is in that regard better than the temporal; and therefore is in spiritual account in order to a spiritual end above that which serves the less excellent. But the effect of this discourse is, that kings are subject to bishops just as the princes of Israel were to those that anointed them; that is, they came under their hands for unction, and consecration, and blessing, and counsel, and the rites of sacrifice. And all this is very true; and this is all that was or could be intended by S. Chrysostom, or those other eminent lights of the primitive church, who set their order upon a candlestick, and made it illustrious by the advantage of comparison. The advantages are wholly spiritual, the excellencies are spiritual, the operations are spiritual, and the effects are spiritual; the office is spiritual, and so is all the power. But because the persons of the men in whom this spiritual power is subjected are temporal as well as princes, and so are all their civil actions, therefore whatever eminence they have for their spiritual employment, it gives them no temporal advantage; that comes in upon another stock: but for the spiritual it is as much as it is pretended; but then it is no more.

§ 2. For it is purely spiritual. Where any thing of temporal is mingled with it, it is not greater in that, but subject to the temporal power. Without this there could never be peace: and where the jurisdiction of two courts do interfere, there is perpetual wranglings. But God having ordained two powers, hath made them both best; and yet so that both of them are inferior: but because it is in differing powers, they both rule in peace, and both obey with pleasure. How the ecclesiastic state is subject to the civil I have largely accounted: now I am to describe the eminencies, powers, advantages, and legislations of the spiritual; concerning which we shall have the best light if we rightly understand the nature and quality of the power.

§ 3. "As My Father sent Me, so send I you," said Christ to His apostles. Now it is plain how the Father was pleased to send His Son; with humility and miracles, with a low fortune and a great design, with poverty and power, with fulness of the Spirit and excellency of wisdom. That was the manner. The end was, the redemption of man, the conquering of the devil, the preaching of the gospel, the foundation of the church, the instruction of faith, the baptizing converts, the reformation of manners, the extirpation of sin. This was the entire end, and that was the just manner in which Christ was sent into the world: and since His apostles and their successors were to pursue the same ends and no other, they were furnished with the same power: and Christ gave them the Holy Ghost, and gave them commandment and power to "teach all nations," to

[b] [2 Kings ix. 4.]

"baptize them," to bind and to loose, to minister His body and His blood, to exhort and to reprove, to comfort and to cure, to make spiritual separations of the vile from the precious. This is the sum of all the commissions they had from Christ.

§ 4. This power and these commissions were wholly ministerial, without domination, without proper jurisdiction, that is, without coaction; it being wholly against the design of the religion that it should be forced; and it being far removed from persons so disposed, so employed, so instructed to do it. And therefore one of the requisites of a bishop is μὴ εἶναι πληκτικὸν, 'he must be no striker:' he had no arms put into his hand to that purpose; the ecclesiastic state being furnished with authority, but no power, that is, *auctoritate suadendi, non jubendi potestate* (that I may use the expression in Tacitus[c]), 'an authority to persuade' and to rebuke, but 'no power to command,' as the word is used in the sense of secular dominion.

§ 5. Concerning which that the thing be rightly understood, we must first truly understand the word. Accursius[d] defines jurisdiction to be *potestatem de publico introductam cum necessitate juris dicendi et æquitatis statuendæ*, 'a public power of doing right and equity.' It is *potestas ad jus dicendum*, so Muscornus Cyprius, 'a power of giving sentence' in causes between party and party. But we shall best understand the meaning of *jurisdictio* by that place of Cicero[e]:—*Quid ergo istius in jure dicendo libidinem demonstrem? Quis vestrum non ex urbana jurisdictione cognovit? Quis unquam isto prætore Chelidone invita lege agere potuit? Judices citari jubet, jubet citari Heraclium, citatur reus Sopatrus, Stenium citari jubet: atque ut aliquando de rebus ab isto cognitis, judicatis, et de judicibus datis desistamus dicere, &c.* From which words it is plain that jurisdiction is a power of magistracy to summon the parties, to hear their cause, and to give sentence. And therefore in Suetonius we often find these expressions, *Imperatorem jus dixisse, cognovisse, judicasse*, 'the emperor took cognizance, did judge, did give sentence,' that is, did exercise jurisdiction; empire is always included under jurisdiction, and it is divided into a cognition of capital and pecuniary causes, as appears plainly in the title of the code *De jurisdictione*, which handles both causes: and Asconius Pedianus in his argument upon the fourth action against Verres proves expressly that capital actions are part of jurisdiction. To which purpose is that of Suetonius in the life of Augustus[f]; *Dixit autem jus non diligentia modo summa sed et lenitate, siquidem manifesti parricidii reum, ne culeo insueretur, quod non nisi confessi afficiebantur hac pœna, &c.* But of this there is no question. Now of jurisdiction thus understood, it is evident that the ecclesiastic

[c] [German., cap. 11.]

[d] In l. i. in verbo 'Potest,' ff. de jurisdict. [Digest., lib. i. tit. 2. l. 1. tom. i. col. 123. corp. jur. civil. per J. Fehum, fol. Lugd. 1627.]

[e] Orat. in Verrem iv. [capp. 16, 7, 48.]

[f] [cap. 33.]

state hath no right derived to them from Christ, that is, no power to punish any man corporally, or to compel them to answer in criminal causes; they have no power of the sword, no restraint upon the body: but having care of souls, which cannot be governed by force, they are to govern as souls can be governed, that is, by arguments and reason, by fear and hope, by preaching of rewards and punishments, and all the ways of the noblest government, that is, by wisdom and by the ways of God.

§ 6. This appears in the apostles' description of their own office and power. "What is Paul and what is Apollo, but ministers by whom ye believed[g]?" "Ministers of Christ, stewards of the mysteries of Christ[h]:" "to us is committed the word of reconciliation[i];" "we are embassadors for Christ;" οὐ κυριεύοντες, we are "not lords over the flock;" but "as though God did beseech you by us, we pray you in Christ's stead to be reconciled to God." Thus Christ set them over the household, not to strike the servants, but "to give them their meat in due season[k];" that is, as Optatus[l] expresses it, to minister the food of God's word and sacraments to the servants of the family. *Nolite vobis majestatis dominium vindicare; nam si ita est, vindicent sibi et ministri qui mensæ dominicæ famulantur, ut pro humanitate exhibita ab invitatis gratulatio eis referatur . . Est ergo in universis servientibus non dominium sed ministerium.* Therefore esteem not yourselves to have any thing but the ministry and service, nothing of dominion. And indeed we need challenge no more: it is honour enough to serve such a prince, to wait at such a table, to be stewards of such a family, to minister such food. This service is perfect freedom; and that is more than can be said of the greatest temporal dominion in the world. *Principes ecclesiæ fiunt ut serviant minoribus suis, et ministrent eis quæcunque acceperunt a Christo*[m]. The same with the words of Christ, 'He that is greatest amongst you, let him be your minister.' 'For the honours in christian religion at the first look indeed like dignities; but indeed they are not divers honours, but divers services: as it seems to be an honour to the eye that it enlightens the whole body, but it is not its honour, but its ministry; so it is amongst the saints; it is not his honour, but his act. And so is the apostleship thought to be a great dignity, but it is not so; but it is his ministry. For so S. Paul[n] says, "If I preach the gospel it is no glory to me: for necessity is laid upon me, and woe is unto me if I do not preach the gospel: for if I do it willingly, I have a reward; but if unwillingly, there's nothing but a stewardship entrusted to me."' The consequent of this discourse is this in the words of the same father[o], *Quicunque desiderat primatum in terra*

[g] [1 Cor. iii. 5.]
[h] ['of God'—1 Cor. iv. 1.]
[i] [2 Cor. v. 19; 2 Cor. vi.; Acts xxvi.]
[k] [Luke xii. 42.]
[l] Lib. v. contr. Parmen. [cap. 7. p. 87.]
[m] Homil. xxxvi. in Matt. apud Chrysost. [op. imperfect. tom. vi. p. 153 D.]
[n] [1 Cor. ix. 16, 7.]
[o] [ubi supra.]

inveniet confusionem in cœlo, 'whosoever desires primacy' (meaning amongst the ecclesiastics, and by virtue of their order and office) 'upon earth,' shall find confusion in heaven.

§ 7. But this is most expressly and clearly taught by the fathers of the church. So S. Gregory Nazianzen[p], 'He that is set over others' (speaking of bishops) 'laying behind him every sin, must proceed in godliness, so that by the example of his spiritual growth he may draw others unto virtue, especially by that form of humility which was delivered to us by the Lord.. *Non enim oportet vi vel necessitate constringere, sed ratione et vitæ exemplis suadere.* For no man is to be constrained by force or by necessity, but persuaded by reason and good examples.' And thus S. Hierome[q] distinguishes the ecclesiastical power from the regal. *Ille nolentibus præest, hic volentibus; ille terrore subjicit, hic servituti donatur; ille corpora custodit ad mortem, hic animas servat ad vitam:* 'the king governs whether men will or no, the bishop none but the willing; he subdues them by terror, but the bishop is but the servant of the people's souls; the king keeps bodies reserved for death, but the bishop takes care of souls that they may live eternally.' Upon this account S. Chrysostom[r] considers the great difficulty there is in the discharge of the episcopal office, and affirms it to be more troublesome than that of kings; as much as the rage of the sea in a tempest is greater than the curlings of a troubled river: and he gives this reason for it, *Quoniam illæ plures sunt qui adjuvant, eo quod legibus ac mandatis omnia peraguntur: hic vero nihil tale, neque enim licet ex auctoritate præcipere;* 'because there are more helpers in the secular government, for all things are transacted by laws and by commandments; but here' (meaning in the ecclesiastic state) 'there is no such thing, for it is lawful, but we have no authority to command any thing.' For *In potestate subjectorum est obedire vel non*[s]. They are not domestics, they are not properly subjects, but *obedientiam habentes in sua ipsorum potestate*[t], 'they have their obedience in their own power:' they may if they will, and they shall have a good reward; but if they will not, they may choose. For with this power and upon these terms "the Holy Ghost hath made them overseers, to feed," not to rule, "the church of God[u]," that is, not to rule by empire, but by persuasion. And this is intimated by the epistle to the Hebrews[x], "Obey them that are set over you, and submit yourselves; for they watch for your souls, that they may do it with joy, not with grief; for that is unprofitable for you." That is, submit yourselves to your spiritual rulers cheerfully and willingly: if you do not, they can have no comfort in their ministry; it will grieve them

[p] In apologet. [orat. ii. § 14, 15. tom. i. p. 19.]
[q] In epitaph. Nepot. [epist. xxxv. tom. iv. part. 2. col. 273.]
[r] Homil. iii. in Acta apost. [tom. ix. p. 29.]
[s] Homil. iii. in Tit. [tom. xi. p. 746.]
[t] Hom. iii. in Acta. [ubi supra.]
[u] [Acts xx. 28.]
[x] [Heb. xiii. 17.]

to find you refractory, and you will be the losers by it, for their grief will do you no profit. Now if these rulers had a power of coercion, he could quickly make them willing, and the στεναγμὸς the 'anguish' would fall upon the disobedient. The same precept is in the epistle to the Thessalonians[y], where the words do themselves expound the nature of the government, "We beseech you, brethren, to know them which labour amongst you and are over you in the Lord, and admonish you, and to esteem them very high in love for their works' sake." And immediately after he calls them *in partem sollicitudinis*, into a participation of this rule, νουθετεῖτε ἀτάκτους[z], "we beseech you, brethren, to admonish, or to warn, to reprove them that are unruly." That is, you must help us in our government: we are over you to admonish you, but you must admonish one another; that will help our work forward when you are willing. But 'they which are over you' must be highly esteemed, not for their dignity, but for their works' sake, not in fear, but 'in love;' for they are over you not by empire, but by discourses, not by laws, but by exhortation. And certainly this is the best government in the world; that the people of God *sit populus voluntarius*, should serve God with reason and choice, with love, and pleasure, and eternity of satisfaction. And this is observed also by S. Chrysostom: 'The princes of this world (saith he) are so much inferior to this spiritual power, by how much it is better to rule over the wills of men than over their bodies:' and that's the state of ecclesiastical government, concerning which who please to see much more, may with pleasure read it in S. Chrysostom in his first homily upon the epistle to Titus, and the eleventh homily upon the epistle to the Ephesians, and in his second book 'Of priesthood.'

§ 8. Now against this it will not be sufficient to oppose any precedents of government under the Old testament. He there that did not obey the word of the high-priest was to die the death[a]; for they had ἀναγκαστικὴν δικαιοκρισίαν, a true proper formal jurisdiction given them by God: and when Moses sat in judgment, συνέδρευον ἱερεῖς, saith Philo[b], 'the priests were his assessors;' and *Judæis sacerdotii honos firmamentum potentiæ erat*, 'the honour of the Jewish priesthood was a great establishment to the power of the nation,' saith Tacitus[c]. For the priests were ἐπίσκοποι[d], 'bishops,' and judges of controversies, and by the law appointed to inflict punishment upon criminals, said Josephus[d]. But in the gospel there was no such thing. The Jewish excommunications were acts of power and a mixed empire; ours are securities to the sound part, and cautions against offenders. Their preachings were decrees sometimes;

[y] [1 Thess. v. 12.]
[z] [v. 14.]
[a] [Deut. xvii. 8—12.]
[b] [vid. de justit., tom. ii. p. 367. ed. Mangey.]
[c] [Hist., lib. v. cap. 8.]
[d] ['Επόπται.] Contr. Apion., lib. xi. [§ 21. p. 1379.—The officers appointed by Antiochus Epiphanes are styled ἐπίσκοποι,—Antiq. Jud., lib. xii. cap. 5. § 4. p. 533.]

ours can be but exhortations and arguments to persuade and invite consent.

§ 9. But neither can it be denied but that the apostles did sometimes actions of a delegate jurisdiction. Thus S. Peter gave sentence of death against Ananias and Sapphira; S. Paul inflicted blindness upon Elymas the sorcerer, and delivered Hymenæus and Alexander, and the incestuous Corinthian to be buffeted by Satan; and S. John threatened to do the like to Diotrephes. That this was extraordinary appears by the manners of animadversion, which were by miracle and immediate divine judgment; for those which were delivered to Satan were given up to be corporally tormented by some grievous sickness or violence of an evil spirit, as S. Chrysostom[e], S. Ambrose[f], S. Hierome[g], and divers others of the fathers do affirm[h]. But therefore this was an act of divine jurisdiction, not of apostolical: it was a miraculous verification of their divine mission, seldom used; not by ordinary emission of power, but by an extraordinary spirit: for so S. Paul[i] threatened some criminals in the church of Corinth, that if he did come he 'would not spare them:' but it was because they made it necessary by their undervaluing of his person and ministry. 'Since ye do so, since ye do look for a sign and proof of Christ speaking in me, you shall have it.' It is not S. Paul's ordinary power, nor his own extraordinary, but δοκιμὴ Χριστοῦ, an experiment of Christ's power, who was pleased to minister it by S. Paul, as well as by any other apostle: something like those words of our blessed Saviour, "An evil and adulterous generation seeketh after a sign; and the sign of the prophet Jonas shall be given them." But then there was great necessity, and some prodigious examples were to be made to produce the fear of God and the reverence of religion, that the meanness and poverty of the ministers might not expose the institution to contempt: and because the religion was destitute of all temporal coercion, and the civil power put on armour not for it but against it, therefore God took the matter into His own hand, and by judgments from heaven verified the preachings apostolical. Thus when the Corinthians did use the Lord's supper unworthily God punished them with sickness and with death, as the apostle himself tells them[j]: for to denounce them after and to pronounce them before were equal actions of ministry, but equally no parts of jurisdiction. This way continued in the church, though in very infrequent examples, till the emperors became Christians, and by laws and temporal coercions came to second the word of ecclesiastical ministry. For S. Cyprian[k] tells of some persons who being afflicted with evil spirits were cured at their baptism, who afterwards upon their apo-

[e] 1 Corinth. homil. xv. [tom. x. p. 127.]

[f] De pœnit., lib. i. c. 17. [tom. ii. col. 416.]

[g] [In 1 Cor. v. tom. v. col. 983.]

[h] S. August. contr. epist. Parmen., lib. iii. cap. 1. [tom. ix. col. 57.]

[i] [2 Cor. xiii. 2.]

[j] [1 Cor. xi. 30.]

[k] Epist. lxxvi. [al. lxix. p. 188.]

stasy from the faith were afflicted again, and again fell into the power of the devil: *Recedente siquidem disciplina recessit et gratia;* when they forsook Christ, Himself took the matter into His own hand, and was not wanting by an act of His own jurisdiction to declare that He was their Lord, and would be honoured by them or upon them.

§ 10. And this was the rod that S. Paul threatened to the schismatical Corinthians; not any emanation of the ordinary power of ministry, but a miraculous consignation of it: for these things (as S. Chrysostom[l] observes) S. Paul[m] calls *signa apostolatus mei,* 'the signs of his apostleship' wrought among them in signs and miracles and powers: this was effected in healing the sick, and in striking the refractory with the rod of God; in giving sight to the blind, and making them blind that would not see; in raising the dead to life, and causing them to die that would not live the life of righteousness. But this was not done ἰδίᾳ δυνάμει, not 'by any power of their own,' but by that power to which they only ministered, by the power of Christ who (blessed be His holy Name for it) keeps this power only in His own hands. In these their power was no more a power of jurisdiction than Elias had, who, as S. James[n] said, "prayed that it might," and "prayed that it might not rain;" and called for fire from heaven. And just so the apostles being moved by an extraordinary Spirit did, when the Spirit saw cause, minister to the divine judgment. But that was not their work; they were sent of another errand, and were entrusted with other powers.

§ 11. But after all this, it is certain that there were in the church some images and similitudes of jurisdiction in their spiritual government. The soul is not, cannot be, properly subject to any jurisdiction but that of God. For jurisdiction is the effect of legislation, and is in the mixed empire as the other is in the mere. Now none can give laws to souls but God; He only is Lord of wills and understandings; and therefore none can give judgment or restraint to souls but God. But as by preaching the ecclesiastic state does imitate the legislation of God, so by the power of the keys she does imitate His jurisdiction. For it is to be observed that by the sermons of the gospel the ecclesiastics give laws to the church, that is, they declare the laws of God; and by the use of the keys they also declare the divine jurisdiction: for as the church can make no law of divine worship or divine propositions, of faith or manners, but what she hath received from Christ and His apostles; so neither can she exercise any judgment but the judgment of God. To that she ministers by threatenings and denunciations, by comforts and absolutions, as she ministers to the legislative of God by preaching and publishing, by exhortation and command.

[l] [2 Cor. xii. 12.]

[m] Homil. xiv. in 1 Cor. [tom. x. p. 119.]—homil. xxvii. in 2 Cor. [p. 628.]—homil. v. in 1 Tim. [tom. xi. p. 576.]

[n] [chap. v. 17.]

§ 12. For there is an empire in preaching; there is a power of command which the bishops and ministers of the church of God must exercise. To this purpose S. Chrysostom[o] discourses excellently, 'There are some things which need teaching, some which need commanding: if therefore you invert the order, and had rather command where it is necessary for you to teach, you are ridiculous; and as bad if you go about to teach where you rather should command. That men should do no evil, you need not teach, but to forbid it with the force of a great authority; and so you must command them that they should not give heed to Jewish fables: but if you would have them give their goods to the poor, or keep their virgin, here you have need of doctrine and exhortation. Therefore the apostle said both, Command and teach .. Thus you see that a bishop must not only teach, but sometimes it is necessary that he should command.' But then this being a doctrinal precept, or commanding by the force of a clear and confessed doctrine, hath in it no other empire but that it is a commanding in the name of God, and means this only, that some things are so clear and obvious, so necessary and confessed, that he who neglects them is condemned by himself; he need not be taught, but only commanded to do his duty: but if he will not, God, who gave him the law, hath also jurisdiction over him: and to this also the church does minister; for the bishop commands him in God's Name, and if he will not he can punish him in God's name, that is, he can denounce God's judgments against him; and that's our ministerial jurisdiction: he can declare him to be out of the way of salvation, and unworthy to receive the holy mysteries and pledges of salvation. This is our coercion.

§ 13. But the use of the keys does differ from proper jurisdiction in this great thing, that if the keys be rightly used they do bind or loose respectively; but if they err, they do nothing upon the subject, they neither bind nor loose. Now in proper jurisdiction it is otherwise: for, right or wrong, if a man be condemned he shall die for it; and if he be hanged he is hanged. But the church gives nothing but the sentence of God, and tells upon what terms God will or will not pardon. If the prince minister rightly, and judge according to the will and laws of God, the subject shall find that sentence made good in heaven by the real events of the other world, which the priest pronounces here upon earth. But if the priest be deceived, he is deceived for himself and for nobody else; he alters nothing of the state of the soul by his quick absolution, or his unreasonable binding. For it is not true here which the lawyers say of human jurisdictions, *Quod judex errans pronunciavit, ob auctoritatem jus dicentis transit in rem judicatam.* The priest hath no such authority, though the civil power have. The error of the judge does not make the sentence invalid; his authority prevails above his error: but in the other it is the case of souls, and therefore is conducted by

[o] Homil. xiii. in 1 Tim. [tom. xi. p. 617 C.]

God only as to all real and material events, and depends not upon the weakness and fallibilities of men. And therefore the power of remitting sins given to the church is nothing but an authority to minister that pardon which God gives by Jesus Christ. 'The church pardons sins as the levitical priest did cleanse the lepers,' said S. Hierome[p]; that is, he did discern whether they were clean or no, and so restored them to the congregation: but *apud Deum non sententia sacerdotum, sed reorum vita quæritur,* 'God regards not the sentence of the priest, but the life of the penitent.' For the priest, *aliquid est ad ministrandum ac dispensandum verbum ac sacramenta, ad mundandum autem et justificandum non est aliquid;* 'is something as to the ministry and dispensation of the word and sacraments, but nothing as to the purifying and justification of a sinner; for none works that in the inward man but He who created the whole man.' They are the words of S. Austin. This therefore is but *verbum reconciliationis*[q]: 'the word of reconciliation is entrusted to us;' but we properly give no pardon, and therefore inflict no punishment.

§ 14. Indeed the power of the keys is by a metaphor changed into a sword, and S. Paul's[r] wish, "I would they were even cut off that trouble you," seems to be the warrant; and by excommunications evil persons are cut off from the congregation of the Lord. And it is true that the ecclesiastical authority is a power of jurisdiction, just as excommunication is a sword. But so is the word of God, "sharper than a two edged sword;" and so is a severe reproof, it cuts to the bone: *Nec censorium stylum, cujus mucronem multis remediis majores nostri retuderunt, æque posthac atque illum gladium dictatorium pertimescamus,* said Cicero[s]: 'the censor's tongue was a sword, but our ancestors sometimes did not feel it smart; and we fear it not so much as the sword of the dictators.' But how little there is of proper jurisdiction in excommunication we can demonstrate but by too good an argument. For suppose Julian robbing of a church, striking the bishop, disgracing the religion, doing any thing for which he is *ipso facto* excommunicate: tell him of the penalty he incurs, cite him before the bishop, denounce it in the church; what have you done to him that shall compel him to do his duty? Suppose he will not stay from the church, that he will go to another, to a strange country, or that he despises all this. Have you made him afraid? have you troubled him? have you grieved him? have you done that which shall make him do so no more? But Julian was about to renounce christianity, and thinks it all a fable. Or suppose less than that: suppose a man that keeps a concubine, and knowing that he sins, and yet resolves not to quit the sin, he abstains from the communion and the public service of the church; if the bishop admonishes him to leave the partner of his sin, how if he will not? By what

[p] In Matt. xvi. [tom. iv. part. 1. col. 75.]
[q] [2 Cor. v. 19.]
[r] [Gal. v. 12.]
[s] Orat. pro Cluentio. [cap. 44.]

compulsory can the ecclesiastic state enforce him? If you threaten to drive him from the communion, he hath prevented you; he never comes at it. If from prayers, you do him a kindness; for he loves them not. If from sermons, then he will enjoy his lust without controlment. What can the church do in this case? But suppose yet once more, that a violent hand shall pull down the whole episcopal order, what shall the church do then? will she excommunicate the men that do it? They say the order itself is antichristian; and can they fear to be excommunicated by them? And who fears to be excommunicated by the presbytery, that believes them to be a 'dead hand[t]' and can effect nothing? And in the sum of affairs, only the obstinate and the incorrigible are to be proceeded against by that extreme remedy. And to them who need that extreme it is no remedy: for they that need it care not for it: and what compulsion then can this be? If it be any thing really effective, let it be persuaded to them that shall deserve it; for it must work wholly by opinion, and can affright them only who are taught to be afraid of it. It can only do effort upon them who are willing to be good in the way of the church: for it is a spiritual punishment; and therefore operates only upon the spirit, that is upon the will and understanding, which can have no coercion: so that in effect it compels them who are willing to be compelled, that is, it does not compel at all, and therefore is but improperly an act of jurisdiction.

§ 15. For that which the ecclesiastics can do, is a suspension of their own act, not any power over the actions of other men: and therefore is but an use of their own liberty, not an exercise of jurisdiction. He does the same thing in sacraments as he does in preaching: in both he declares the guilty person to be out of the way to heaven, to be obnoxious to the divine anger, to be a debtor of repentance; and refusing to baptize an evil catechumen, or to communicate an ill-living Christian, does but say the same thing: he speaks in one by signs, and in the other he signifies by words. If he denies to give him the holy communion, he tells him he is not in the state of grace and the divine favour, he tells him that he hath no communion with Christ; and therefore by denying the symbols says that truth which by his sermons he publishes. All the effect and real event is produced by the sin of the man; and the minister of religion tells him as God's messenger what he hath done to himself, and what will come upon him from God. This is *judicium, non jurisdictio,* 'a judging, not a jurisdiction;' a judging a man worthy or unworthy; which does not suppose a superiority of jurisdiction, but equals do it to their equals, though in this the clergy hath a superiority, and an authority from God to do so.

§ 16. Add to this, that the other effects of excommunication are not any force or impression upon the delinquent, but are the caution and duty of the church or *sanior pars,* of them that are innocent; for

[t] [χεὶρ ἄκυρος—vid. vol. v. pp. 62, 113.]

it is a command to them to abstain from the society of the criminal: for to him it is no direct obligation; indirectly it is, as I have already affirmed and shall afterwards discourse.

§ 17. This discourse cannot lessen the power and authority of the church; it only explicates the nature of it, because it is useful to many cases of conscience, and does rightly establish the foundation of this great measure of conscience, ecclesiastical laws, and it adds grandeur to it. For it is in the ecclesiastical government as it was in the judaical before they had a king. They had no king of their own, but God was their king; and He did exercise jurisdiction, and appointed judges over them, and wrought miracles for their punishment or their escape respectively: and so it is in the church; Christ our head keeps the spiritual regality and the jurisdiction in His own hands, but sends us to minister it according to His laws; which if we do, they who are found criminals cannot indeed be smitten by us, but they shall be smitten by God; and therefore Christ said the same thing to His missionaries as God did to Samuel[u]: "They have not rejected thee, but Me," said God; and, "He that despiseth you, despiseth Me," said Christ[v]. And now, although kings have the sword in their own hand, and can smite the disobedient, yet we cannot; but God will smite them that are disobedient to the church: and that's worse for them that feel it, and better for them that are but threatened; for it is true, that by repentance they may escape that which is threatened by the church, which in the commonwealth they cannot: but these that feel it are in a worse condition; for "It is a fearful thing to fall into the hands of the living God[w];" and, "Who can dwell with the everlasting burnings[x]?" "For our God is a consuming fire[y]."

RULE II.

THE CHURCH HATH POWER TO MAKE LAWS AND TO GIVE COMMANDS OBLIGING THE CONSCIENCE, THAT IS, TYING THE SUBJECTS TO OBEDIENCE UNDER THE PENALTY OF COMMITTING SIN, OR OF INCURRING THE DIVINE DISPLEASURE.

§ 1. By the church it is certain I must first mean the church catholic, or all the governors of the christian assemblies in the world: because if it be in a part it is in the whole, and if it be neither in a part nor in the whole it is no where. But yet because the whole catholic church, that is, all the governors of churches (for if we speak of the church making laws, we must mean the governing

[u] [1 Sam. viii. 7.]
[v] [Luke x. 16.]
[w] [Heb. x. 31.]
[x] [Isai. xxxiii. 14.]
[y] [Deut. iv. 24; Heb. xii. 29.]

part of the church) did never meet since the days of the apostles, who being few and united and absolute and supreme could then do what could never be done since: it is necessary for the reducing this rule to practice, that the legislation and the power of commanding be subjected in some more particular subject; and therefore I shall instance in the least. By the church, I mean every particular church joined to the head of union; and by the particular church, I mean the angel of that church, the bishop; according to that saying of S. Cyprian[z], *Scire debes episcopum in ecclesia esse, et ecclesiam in episcopo*, 'the bishop is in the church, and the church in the bishop;' that is, he is in the church as the head is part of the body, and the church is in him as in their representative, and all their power is ministered by his hand, and their interest promoted by him; and he is the hand of God and the hand of the people; this lifted up, and that let down; this in the ministry of prayers, and that in the ministry of blessings. And therefore S. Chrysostom[a] expounding those words of Christ, "Tell it unto the church," says that they mean, Tell it to the bishop of the church, who is to minister food and discipline to the congregation.

§ 2. Now all the power of commanding and making ecclesiastical laws, that is, laws of religion, is wholly in the pastors and bishops in the supreme order of ecclesiastics. If there be two orders of divine institution, it is certain that one is the superior; and therefore one only is to rule in eminency, and the other can rule but in minority and substitution: and that which is appointed to rule is the superior. Now the case then is clear as to the present purpose: the presbyters were under bishops, and might be accused before them and rebuked by them; we see it plain in the case of Timothy and Titus, to whom S. Paul gave rules of court, and measures of taking cognizance of causes brought before them. There was plainly the judging order and the judged: the elders or presbyters were judged; over them were overseers placed. *Par in parem potestatem non habet.* Since therefore a judicatory was placed in the church, though it was a spiritual only and without temporal coercion, yet it had a just authority; and therefore must suppose a distinction in the clergy of superior and inferior. Now because there can be no union political without government, and the government which was appointed was that of the ἄνδρες ἡγούμενοι, 'the ruling clergy,' it follows that the bishop being the head of spiritual union in the first institution of the church, every society of Christians is reckoned one by the unity of the bishop; and therefore that society of a bishop and his parish is the least indeed, but it is a christian commonwealth. Now the practice apostolical and primitive administering this power by one and one in every church, where there were many presbyters, it must be evident that he who was superior to the presbyters was to rule in every congrega-

[z] Epist. ad Florent. Pupian., lib. iv. ep. 9. [al. epist. lxvi. p. 168.]

[a] Homil. lx. in Matth. [al. lxi. tom. vii. p. 607 D.]

tion; and because there was none superior to him by divine or apostolical appointment, all the legislative or commanding power in the church is founded in the episcopal order; and therefore that one bishop hath in his own charge a legislative or power of command; and therefore much more when many bishops meet together. A diocese is the least circuit of government, but it is an entire body subject to distinct commands; that is, every diocese hath one set over them in the Lord, to whom the people are by the commands of Jesus Christ tied to give obedience.

§ 3. Whether the diocese be little or great, allowed or disallowed, in city or in country, divided into parishes or not divided, under metropolitans or not under, of many churches or but one, it matters not: where there is a bishop and a congregation there is a diocese, and there is a power of commanding and a necessity of obeying, *intra limites disciplinæ* [b], within that pale in which they have warranty and power to govern and to give commandments. As for parishes in the late sense of the word, that is, the charge of a single presbyter, it is no body politic of apostolical or divine appointment: for the presbyters were called *in partem sollicitudinis*, into the help of the ministry; but they had no cure of souls, save only by delegation and special and temporary appointment, for some whole ages in the church: and therefore the governing and the commanding authority cannot be extended to parishes and to their curates, which are of late date, and received no power from Christ but that of ministry, which is also conveyed by the bishop's hands. But then because above the bishop there is no appointment in the whole religion, it is necessary that the legislative be established in him: if we go higher we can never come to a society of apostolical or divine institution in the church, because between the whole catholic church, either in diffusion or representation, and a single diocese, all the intermedial unions, as of metropolitans, primates, patriarchs, councils provincial or œcumenical, are by consent and positive and human institution, but they directly establish no divine government. This only is properly such: and though this can suffer alteration as to the administration of it, yet the proper seat of the authority is the bishop, by virtue of his order. Whether the bishop of Rome received the power into himself alone, and so conveys it to all other bishops, is not material to our present enquiry; for that is a question of the manner of receiving it, not of the power when it is received. I shall in order to other purposes discover the unreasonableness of that fond pretence and novelty. But that which I say is, that those persons who by Christ's appointment to or by the apostles were authorized to govern the church, are the heads of christian societies, and every such society is a distinct government; and that this cannot be the division of parishes, because that division was later than the authority: and though this be true also of dioceses as they are now divided, yet that

[b] [Tertull. de idol., cap. 15. p. 95 A.]

division being but accidental to the charge, and the charge being an appointed relation, that which is accidental and superinduced cannot prejudice the nature and institution of it, but that a bishop and his charge more or less is an entire society or commonwealth, as much as the thing can be; that is, according to the nature and capacity of the subject matter, it is an entire government, and prelate and people make the parts of the integral constitution.

§ 4. To the verification therefore of the power thus subjected, all those titles of eminency and superior office recorded in scripture do aptly minister: as that they are called pastors, and rulers, and *præpositi*, and ἐπίσκοποι, 'bishops' or 'overseers' of the church: he that hears them hears Christ, who hath sent them as Himself was sent. Upon the account of these the first rulers of churches in scripture did give laws to their people, and threatened the disobedient not only by the force of their extraordinary power, but by the effects of their ordinary ministry. The particular instances of command I shall enumerate when I give account in what things they have power to make laws; but these words of power were sufficient warrant, and were like seals to their commissions and monitors of their duty. But so the rulers of the church did practise their power, and taught the necessity of obedience.

§ 5. To this purpose are those words of S. Clement[c] to S. James the brother of our Lord; 'These things, most dear brother, I have received from the mouth of holy Peter, who gave the commands, and I have endeavoured to shew them to thee, that thou mayest command them all to be kept inviolate, because ecclesiastical affairs ought not to be done carelessly, but with diligence. Therefore let no man think that without danger he can neglect these precepts, or dissemble them; *quia in judicio Dei ignis æterni tormenta sustinebit qui ecclesiastica decreta neglexerit*, because in the judgment of God he shall suffer the torments of an eternal fire who shall neglect the decrees of the church. But he that shall hear thee as the minister of Christ commanded, shall receive glory: but he that shall not hear thee, or rather the Lord speaking by thee, shall receive to himself damnation.'

§ 6. S. Ignatius[d] is very frequent and express in this particular. 'Be subject to the bishop as to the Lord; for he watches for your souls as he that must give an account to God.' 'For it is necessary that you do nothing without the bishop: for he that is disobedient to bishops will be altogether without God, impious, and a despiser of Christ, and a disparager of his ordinance[e].' And again[f], 'It is fit that you obey your bishop, and in nothing to contradict him: for he that does, despises not him that is visible, but in him despises the invisible God, who cannot be despised of any one; for the bishop hath not his promotion from men but from God.'

[c] Epist. Clem. i. in fine. [inter concill. Harduin., tom. i. col. 49 E.]
[d] Epist. [interpol.] ad Trallian. [§ 2. p. 60.]
[e] [§ 7. p. 63.]
[f] Epist. ad Magnes. [§ 3. p. 18.]

§ 7. Tertullian[g], speaking of the power and judicatory of the church saith, *Ibidem etiam exhortationes, castigationes et censura divina; nam et judicatur magno cum pondere, ut apud certos de Dei conspectu*, 'there are exhortations, chastisements, and a divine censure; for the judgment of the church is with great weight and efficacy, because it is amongst them who are certain that they shall appear before God: and it is the greatest forerunning of the great judgment, if any one sins so that he be banished from the communion of prayers, assemblies, and all holy entercourse.'

§ 8. To which if we add the words of S. Cyprian[h], we shall find not only the power and authority warranted, but the subject of the power declared to be the bishop. "Since there are such and so great and many other examples and precedents, by which the authority of the bishop and his power is established by divine ordinance, what sort of men do you suppose them to be, who, being enemies of bishops and rebels against the catholic church, are not affrighted with the threatening of God admonishing them, nor yet with the revenge of the future judgment? For heresies have arisen and schisms commenced from no other cause than this, that men do not obey (the bishop) the priest of God: neither do they consider that there is in the church for a time a judge in the stead of Christ, to whom if all the brethren would obey according to the commands of God, no man would move any thing against a college of bishops; no man would after the divine judgment is passed, after the suffrage of the people, and the judgment of the bishops his assessors, make himself a judge, not of the bishop, but indeed of God himself; no man would divide the unity of the church; no man by a self-pleasure and pride would make a new heresy apart by himself."

§ 9. I only add the testimony of S. Hierome[i], it being in a clear case as to the thing itself; and the difficulty being only in the measures, the manner and instances of obedience. *Episcopus vester cui ecclesiæ commissum est regimen, &c.* 'Your bishop, to whom the government of the church is committed, whom God hath placed as the surveyor of His vineyard, the shepherd of the sheep, the director of the flock, the leader of the people both in the city and the country in which ye live, let him nourish you with a singular care, and feed you with the meat of holy doctrine, and in the presence of God take especial care of your souls: let all men devoutly and with an even mind as to God obey him to whom all the city is committed.'

But because I have given a larger account of this duty in general, in a discourse on purpose[k], I shall more properly consider in what particular cases the conscience is or is not bound to obey the church governors.

[g] In apologet. [cap. xxxix. p. 31 A.]
[h] Ep. ad Cornel. papam, lib. i. ep. iii. [al. epist. lix. p. 128, 9.].
[i] In regul. monachor., cap. 17. [tom. v. col. 431.]
[k] 'Episcopacy asserted,' sect. 34, 35. [vol. v. p. 128 sqq.]

RULE III.

THE CHURCH HATH POWER TO MAKE LAWS IN ALL THINGS OF NECESSARY DUTY BY A DIRECT POWER AND A DIVINE AUTHORITY.

§ 1. S. IGNATIUS[l] discoursing of the bishop's power, commands subjection to him in so large and comprehensive terms, that they seem to put an end to all further enquiries in this rule of conscience, by making all enquiries to be useless; because an obedience universal is due. *Necesse est ut quicquid facitis, nihil sine episcopo tentetis, et in nullo illi refragari:* and again[m], *Nec quicquam videatur vobis consentaneum quod sit præter illius judicium; quod enim tale est, Deo inimicum est:* 'it is necessary that whatsoever ye do, ye do nothing without the bishop; that ye be obedient to him, and be refractory against him in nothing:' 'neither let any thing please you that is besides his judgment; for whatsoever is so is an enemy to God.' The same also he repeats in other places[n], and gives it in command to other churches. But this is too general to guide any man, and therefore of itself requires a limit: and therefore himself does explicate it in his letter to the church of Smyrna[o]: *Sine episcopo nemo quicquam faciat eorum quæ ad ecclesiam spectant,* 'without the bishop let no man do any thing of that which belongs to the church:' that is, whatsoever is entrusted to the bishop's charge, the conduct of souls, the duties of religion, the commandments of God, the sacraments of the religion, the orders of the divine institution, the interior actions of grace, and the external, which are of necessary ministry and relation to them, are under the discipline and legislation of the church. For in these things only his charge, and therefore only in these things his authority does lie.

§ 2. Thus the bishop hath power to command his subject or parishioner to put away his concubine; and if he does not, he not only sins by uncleanness, but by disobedience too. For the authority of the church being spiritual, it hath power over the spirit, and introduces guilt upon the soul if it be disobeyed. So that it is but folly and ignorance to think the bishop hath no power, because he is to command only in those things where God hath commanded already. For though he is God's minister and commands not by his own will but by God's, yet he hath the authority of God given to him to do that: and besides that it is not reasonable to think that God would give the church rulers His authority for trifling and needless purposes; it is also evident in the thing itself, that it is of great effect, because even in these things he is the voice of God, and judges

[l] Ad Trallian. [§ 2. p. 22.]
[m] Ad Magnes. [interpol. § 7. p. 55.]
[n] Epist. ad Ephes. [§ 3, 4. p. 12.]
[o] [§ 8. p. 36.]

in the place of God, and affrights sinners with the accents of His displeasure, and upon this account brings a burden upon the disobedient which was not brought upon him before the command and sentence of the church.

§ 3. Whatsoever therefore the bishop commands us as from God, in that his power and legislation is properly exercised: and it is absolutely to be obeyed without any other condition or reserve, but that it be indeed the will and commandment of God. So S. Bernard[p], *Quicquid vice Dei (prælatus) homo præcipit, quod non sit tamen certum displicere Deo, haud secus omnino recipiendum est ac si præcipiat ipse Deus,* 'whatsoever the prelate in the stead of God commands, provided you are certain it does not[q] displease God, it must be received as if God himself commanded it; for what difference is it whether God by Himself, or by men His ministers, or by His ministering angels, make His will and pleasure known unto us?' Where it is observable that he does not give leave to disobey if we question whether it be God's will or no; for if it be a question, the presumption is for the authority imposing it: and in that case, though it be a doubt in theory, yet that must not hinder the practical obedience; because it is as certain that our lawful superior hath power to command us to obey when we are not certain of the thing, as it is certain that it is a sin if we do it in a doubting conscience, by our own authority. For the authority of God in the hand of a prelate is warrant enough to determine us when we know nothing to the contrary, though our own will is not. If we have a doubting conscience, we have nothing (while the doubt remains) to oppose against it but our will, and that is not sufficient, but a divine authority is. Now although in the present case it does not work to the clearing of the material doubt, yet it does operate to the clearing of the duty: and therefore S. Bernard said well, *quod non sit tamen certum displicere Deo,* unless you are sure, that is, be fully persuaded, you displease God in obeying the bishop, it is certain you do displease God by disobeying him.

§ 4. For it is a part of our obedience not to judge his sentence, that is, not to give judgment against him in a question of difficulty, but to stand to his sentence. *Credas tibi salutare quicquid ille præceperit; nec de majorum sententia judices, cujus officii est obedire et implere quæ jussa sunt,* said S. Hierome[r] in a like case: 'it is your part to obey, and to do what is commanded, and not to judge your judges, but to believe all that to be good which your prelate commands you;' meaning when his command is instanced in the matter of the divine commandment. In things that are plain and easy, every man can be a judge, because indeed there needs none,

[p] Lib. de præcepto et dispensatione. [cap. 12. col. 929 F.]

[q] [rather 'provided you are not certain it does,' &c.; and so it is clear from the sequel that Taylor understood it.]

[r] Ad Rusticum monach. [epist. xcv. tom. iv. part. 2. col. 775.]

for there is no question: but in things of difficulty, and where evidently God is not dishonoured, it is very much our duty to obey the church.

§ 5. Thus the church hath power to command us to be devout in our prayers, to be charitable to our brother, to forgive our enemy, to be heartily reconciled to him, to instruct the ignorant, to follow holiness, and to do justice, and to be at peace with all men; and he that obeys not, does walk disorderly, and may be used accordingly with all the power the church hath entrusted to her, according to the merit of the cause: but it is certain he sins with a double iniquity that refuses God's commandment, and the precept of his spiritual superior; for in these things every minister can exhort, but the bishop can command, that is, he binds the commandment of God by a new obligation, and under a distinct sin, the sin of disobedience.

RULE IV.

THE CHURCH HATH POWER TO MAKE LAWS IN SUCH THINGS WHICH ARE HELPS AND APT MINISTRIES AND ADVANTAGES OF NECESSARY DUTY.

§ 1. This rule is expressly taught by S. Basil[s]: *Necessario ea nos in memoriam debemus redigere quæ dicta sunt ab apostolo, Prophetias nolite spernere .. Ex his autem intelligitur quod si quid nobis imperatum est quod idem sit cum mandato Domini, aut adjuvet, illud tanquam voluntas Dei studiosius diligentiusque a nobis suscipi debet;* 'we must remember what the apostle said, Despise not prophesyings: but if any thing be commanded us which is all one with the command of God, or may help it, it ought to be undertaken by us with diligence and study, as if it were the will of God.' Thus if our bishop in his precepts and sermons of chastity command that the women go not to the public spectacles, where are represented such things which would make Cato blush, and Tuccia[t] have looser thoughts, they are bound in conscience to abstain from those impure societies; and not only from the lust, but from the danger. For in vain is it that God should entrust the souls of the people to spiritual rulers, and give them wisdom to do it, and commandment to do it with advantage, if the people were not tied in duty to decline those places and causes where and whence they do usually perish.

§ 2. And in pursuance of the episcopal authority in the like instances it was that S. Chrysostom held his pastoral staff over the disobedient: for the church had declared that in the holy time of

[s] In regul. brevior., cap. 14. [lege cap. 114. tom. ii. p. 454 E.]
[t] [Qu. 'Tullia?']

Lent the people should live austerely, and therefore he told them at that time especially that they should not go to the public shows and theatres; and to the disobedient he adds this threatening[u], *Sciant omnes his criminibus obnoxii, si post hanc nostram admonitionem in ea negligentia manserint, non toleraturos nos, sed legibus ecclesiasticis usuros, et magna austeritate docturos ne talia posthac negligant, neve tanto contemptu divina audiant eloquia;* 'let all that are guilty of such crimes know, that if after this admonition they persist in this neglect, we will not suffer it, but use the laws of the church against them, and shall teach them with great austerity that hereafter they do not hear the divine sermons with so great contempt.'

§ 3. Upon the same account the church in her sermons of repentance does usually, and hath authority to enjoin actions of internal and external significations and ministries of repentance. In the primitive church the bishops did indict fasting-days, and public litanies, and processions, or solemn supplications and prayers to be used in the times of public danger and necessity. This we find in Tertullian[v], *Episcopi universæ plebi mandare jejunia assolent, non dico de industria stipium conferendarum, ut vestræ capturæ est, sed interdum et ex aliqua sollicitudinis ecclesiasticæ causa,* 'the bishops are wont to command fasting days to all the people, not for secular ends, but for ecclesiastical necessity and advantage.' For when God hath established an office and ministry, it is certain He made it sufficient to acquire all the ends of its designation: since therefore the government even of internal actions and a body or society of men must suppose external acts, ministries, circumstances, and significations, no man can from without govern that which is within, unless he have power to govern that without which the internal act cannot be done in public, in union, and society.

§ 4. And here comes in that rule of the law, 'The accessory follows the nature of the principal;' which hath been so infinitely mistaken and abused by the pretences of Romanists and presbytery for the establishing an empire ecclesiastical in things belonging to themselves, not to God. For the soul being the principal and the body its instrument, they hence argue that they to whom the souls are committed, have therefore a right to govern the body, because it is accessory to the soul; and if the body, then also the accessories of the body, actions, circumstances, time, wealth, lands, and houses, in order to the spiritual good of the soul; which proposition because it is intolerable, it can never be the product of truth, and therefore must be derived from a false understanding of this true rule of the lawyers. But because in its true meaning it serves to conduct many, and particularly this rule of conscience, it is necessary that we know the true meaning of it.

[u] Homil. vi. in Genes. [tom. iv. p. 42 D.]

[v] Lib. de jejunio in psychicos. [cap. xiii. p. 551 C.]

The rule
THE ACCESSORY FOLLOWS THE NATURE OF THE PRINCIPAL
explicated.

§ 5. Therefore for the understanding of it so far as can be in order to our design, it is to be enquired, First, how we shall know which is the principal and which is the accessory? Secondly, In what sense the accessory must follow the nature of the principal?

§ 6. *α*) That which is principal to one purpose, is but the accessory to another sometimes. If Titius hires my land and builds a house upon it, the house is but the accessory, because it came after my land was in possession. But if Titius buys my house standing upon my own land, he buys the land too; for the land is but the accessory, and the house is the principal: because the house being the purchase, it cannot be at all but upon a foundation, and therefore the ground is the accessory, and after the house in the intention of the buyer. *Villa fundum quærat*, it is sometimes true; but ordinarily, *Fundus quærit villam.*

§ 7. *β*) That which is of greatest value is not always the principal, but sometimes is the accessory. The picture of Apollo upon a laurel board is much more precious than the wood, and yet if Apelles should take Lucian's wood and draw the picture, Lucian will make bold with the board, and consequently carry away the picture. A jewel set in gold is much better than the gold, but yet the gold is the principal, because it was put there to illustrate and to adorn the gold; according to that of Ulpian[w], *Semper cum quærimus quid cui cedat, illud spectamus, quid cujus rei ornandæ causa adhibetur.* And therefore if Caius dying leave me in legacy his black cloth suit, I shall also receive the diamond buttons that adorn it: because these were placed there to adorn it; and therefore are the accessory, because they are *usu minores*, and wholly set there for the ministry of the other. *Quod adhibetur alterius rei causa*, that is principal for whose sake the other was sent or put. And therefore it is no good argument to conclude that the body is the accessory, because the soul is more noble. *Cedent gemmæ phialis vel lancibus inclusæ auro argentove*[x]. The soul is indeed a jewel set in gold, but is therefore an accessory to the body in some cases. He that buys the body of a slave hath right to all the ministries of the soul; and the man is bound to serve his master with a ready mind and a good will; and the soul is a παρακολούθημα of the body. The body is first, and the soul comes afterwards to give it life and motion.

§ 8. *γ*) When two substances concur to the constitution or integrity of a third, one is not the accessory to the other. The eye is not the accessory to the head, nor the foot to the leg, nor the hand to the arm; for that only is an accessory, *quod alterius rei causa ad-*

[w] 'Cum aurum,' 19. § 'Perveniamus,' ff. de aur. et argent. leg. [Digest., lib. xxxiv. tit. 2. l. 19. § 13.]
[x] [Id., ibid.]

hibetur aut accedit; if it comes in accidentally and be wholly for the other's sake, then it is an accessory. Thus order and decency and circumstances of time and place are for the ministries and ornament of religion, and therefore are accessories. The outward act is the less principal and an accessory to the inward, for to the inward it wholly ministers; and consequently he that disposes of one may also govern the other, because the less principal is included in the more, and the less and the more have not two administrations, because they have but one use. But the soul and the body are two distinct substances of differing ministrations, acting to several and sometimes to contrary purposes; they are parts of the same man, a better and a worse, but not a principal and accessory, unless it be by accident and in some uses and to some purposes; and then sometimes one sometimes the other is the principal. Concerning which the rule is this.

§ 9. δ) Those things which of themselves are not, but by accident may be made accessories to a principal, are then to be esteemed to be so when they actually and wholly are joined in use to the principal, and serve the end of the principal, but have none of their own. Thus when the soul prays passionately, if the lips move without a deliberate act of understanding, but obeying the fancy, the body in that case is purely the accessory. I say in that case, for if the body receive a command to other purposes, as to attend upon the prince at the same time when the soul prays, in that case they are both principals, and neither of them is accessory to the other. And therefore although it will follow that when the body ministers to the action of the soul wholly, and hath no distinct work and office of its own in that action, he that commands the soul can also command the body; for they are in that ministry but as one: yet it will not follow that when the body is not the accessory, is not conjunct in ministry, but does or can act distinctly and to other purposes, he that is of proper authority to command one hath authority also of the other. And the reason of this will help well to explicate this whole enquiry. For

§ 10. ε) He that pretends to a power over the accessory because he rules the principal, claims his power wholly for its relation to the principal, and therefore it can be extended no further than the relation: but if that relative have also an absolute and irrespective nature, operation or design, it cannot be governed in any thing of this, because of its relative nature and conjunction in the other; for there it is not accessory. For it is the nature of the *συνεκτικὸν αἴτιον· οὗ παρόντος μένει τὸ ἀποτέλεσμα, καὶ αἰρομένου αἴρεται,* 'the conjunct cause or reason, when it is there the work will follow, but when it is away there will be no event,' says the philosopher[y].

§ 11. ζ) It is not enough to make a thing to be accessory, that it

[y] [*Συνεκτικὰ*'.. *ὧν παρόντων πάρεστι τὸ ἀποτέλεσμα, καὶ αἰρομένων αἴρεται.*— Sext. Empir. contr. Pyrrhon., lib. iii. cap. 2. § 15.]

is designed for the use and ministry of another that is principal, but it must be actually applied; for till then it is but a potential accessory, which gives no right, and changes no nature, and produces no effect. Bridles and saddles are made to be used with horses: but he that buys all the horses in a fair cannot claim all the saddles and bridles which are in the same fair to be sold; because they are not yet become the accessories, but are only designed to be so. It is intended that the body should minister to the soul in matters of religion; but because it ministers also to other actions of the soul, he that rules the soul does not by consequence rule the body, unless it be actually applied, and be conjunct with the soul in the ministries of religion.

§ 12. These may be sufficient to declare so much of the nature of accessories as is of use in our present questions. The next enquiry is, what is the meaning of these words, 'The accessory follows the nature of the principal.' For it cannot be meant that whatsoever is said of one may be said of the other, or whatsoever may be done to one may be done to the other. The rulers of souls have power to excommunicate or to cut them off from the body of the church, which is the greatest spiritual power, and is after its own manner a spiritual death. Now suppose the body be an accessory to the soul, it will not follow that he that can cut the soul off from the church, can cut the body also off from the commonwealth. But the meaning is, that *duplici et diverso jure censeri non debent*, they who are joined in one action are to have one judgment, though according to their respective measures. If the soul does well, so does the body ministering to the soul. If it be good to pray, it is good to appoint times and places to pray in, because without time and place you cannot pray: if time and place be contingent and irregular, so are our prayers; if our prayers be solemn and fixed, so must they. And thus also it is in matter of government. If the bishop is to guide the devotion of the soul, he can also give rules to the body in all that which it ministers to that action of the soul; and when they two make one complete action by way of principal and accessory, they are the same one entire subject of government. But this is to be extended no further. This passes not to the distinct actions or ministries of the body; but is confined to that in which it is, and so long as it is one agent with the soul: neither can it pass to warrant any other impression upon the body, but that it be commanded and conducted in the pursuit of that action.

§ 13. And after all, though the rule be thus warily conducted to keep it from running into error, yet neither thus is it always true. *Cum principalis causa non consistat, plerumque ne ea quidem quæ sequuntur locum habent*, says the law[y]. It is sometimes so, sometimes not. Money is accessory to the man, and clothes to the body: but he that hath the man in cure is not the *curator bonorum*; and the physician that gives physic to the body, and conducts the regiment

[y] Ff. de regul. Juris, l. 178; et l. 129, ff. eod. [Digest., lib. l. tit. 17.]

of health, is not master of his wardrobe: and the epigram[z] derided Herod the empiric,

Clinicus Herodes trullam subduxerat ægro:
Deprensus dixit, Stulte, quid ergo bibis?

because when he came to take away his patient's sickness he took away his plate. If the principal act be confirmed by an accessory oath, though the principal act prove null and invalid in law, yet the man is tied by the remaining oath. A man cannot offer to God an indifferent action or thing. And therefore he that promises to God to walk three turns every day, hath done nothing; the act is null, and he is not obliged to pay that to God: but if an oath did supervene, that must stand, though the principal of itself be null; because every oath that can without sin be kept, must stand[a]. The alienation of a minor's lands is rescinded by law, yet the obligation and caution of the tutor for the accessory verification of the principal sale will stand: because there is a reason that separates the accessory from the principal, and the law intending to rescind the translation of the dominion, not to rescind the contract, leaves the principal loose and the accessory bound. This is also thus in actions principal and accessory, which the law calls *personales et hypothecarias*. Mævius dies and divides his estate between Lucius and Lucullus; but he was indebted ten[b] talents, and for caution had engaged some jewels. Lucius pays his five talents, and Lucullus pays four of the other: the personal action of Lucius is dissolved, but the accessory is not; for till Lucullus his personal or principal be taken off, the accessory and cautionary remains upon them both: and this also hath a particular reason, and so have all those cases in which this rule fails.

§ 14. From whence I infer, that this thing is sometimes reasonable, and sometimes unreasonable, but it is never necessary but in one case; and that is, when the accessory is necessary and inseparable, either by reason of a natural or positive conjunction. For some things are accessory by use and customs, some by laws and commandments, some by the nature of the thing. Now of the first two sorts the measures are contingent and alterable: the laws sometimes declare a thing to be accessory, and at other times it is not so; and if by use or contract or custom a thing be accessory, it ceases to be so if the accessory be particularly excepted. As if I buy a house, it is by custom concluded that I intend the garden that is joined to it; and he that sells a horse, sells his bridle: but if the garden be reserved, and the bridle be excepted, the rule is then of no use.

§ 15. Now to apply this to the present enquiries. First, because the body is not in the nature of the thing an inseparable necessary accessory to the soul in spiritual actions and ministries, but the soul can pray alone, and be charitable alone, and love God alone, and the body hath actions, and intentions, and interests which mingle not

[z] [Mart., lib. ix. epigr. 97.]

[a] C. 'Cum contingat,' extr. de jurejur. [Decret. Greg. IX., lib. ii. tit. 23. cap. 28. col. 772.]

[b] [The first edition reads '20.' a mistake which is corrected in the later editions.]

with that which the spiritual rulers are to govern; therefore it cannot be inferred that the body is subject in all things to them who govern souls.

§ 16. But secondly, it does follow and may by force of this rule be inferred that they who are to govern the religion and spiritual actions of the soul, can also govern the actions of the body which minister immediately and necessarily to the necessary actions of the soul: and therefore because it is a duty that we communicate in the communion of saints, when that duty is actually and of necessity to be done, the bishop hath power to command the bodies of men to be present in christian assemblies, according to the precept of the apostle[c], "Neglect not the assembling of yourselves together."

§ 17. And yet further, to come home to the present rule, there are several degrees of necessity, and several reasons of it. Some things are necessary for life, and some for health. Some are necessary for single Christians, some things are necessary for societies; some things are necessary in private, and some in public; some things are for order, and some for precise duty; some things are absolutely, and some are but respectively and in order to certain ends necessary. The body is an accessory to the soul, *atque eodem jure censendum*, 'to be judged by the same laws,' governed by the same persons, subject to the same sentence and conduct, not only in things of absolute necessity, but even in things of great advantage; not only in private necessity, which is always indispensable, but even in public necessities of the church, in which there is greater latitude and more liberty: and the reason is, because even these lesser degrees of necessity are required of us by divine commandment; and it is not only commanded to us to do that which is lawful, but that also 'which is of good report;' not only that we glorify God, but that our brethren be edified. And in proportion to this, it is required of the guides of souls that they 'give' good 'account' of them, but it is required of us also that we so comport ourselves that 'they may do it with joy[d]:' which cannot be supposed if their power be kept within the bounds of a simply and indispensably necessary internal religion; it cannot be done without prosperous circumstances and advantages of religion: in these therefore if spiritual guides have not power to give commands, they have not all that is necessary by all the kinds of necessity which God made.

§ 18. But this rule we see verified by authentic precedents. For the apostles at Jerusalem indeed thought fit to impose nothing but those necessary things which are specified in their decretal: but S. Paul used also this authority by the measures of the present rule, and commanded beyond the limits of absolute necessity, even that which he judged convenient; and verifies his authority in his epistle to Philemon[e], "I might be much bold in Christ to enjoin thee that which is convenient:" and this he actually did to the Corinthian

[c] [Hebr. x. 25.] [d] [Hebr. xiii. 17.] [e] [Philem. ver. 8.]

church, commanding that all things should be done decently and in order[r].

§ 19. Now although it be true that in these things the apostle had some advantages which the bishops in succession have not; he had an infallible spirit, and what he called convenient was so indeed, and he had converted Philemon, he was his father in Christ, and he was one of the pillars upon which Christ built the church, and he was to lay the foundation for an everlasting building: yet because the instance to the Corinthian church was such which was of a perpetual reason, and it would be for ever necessary that things should be done in the church decently and in order, and the question of decency would for ever have variety and flux, succession and a relative uncertainty, it was necessary that of this there should be perpetual judges and perpetual dictators: and these can be no other but the rulers of the church, who have the same power as the apostles had in this, though not so many advantages of power. When the bishops judge truly concerning necessity, and such decencies and reasonablenesses as are next to necessity, they can enjoin them, only they cannot judge so surely; and therefore although there may be more causes of laying aside their commands, yet it is never lawful without cause.

§ 20. But this is not to be extended to such decencies as are only ornament, but is to be limited to such as only rescue from confusion: the reason is, because the prelates and spiritual guides cannot do their duty, unless things be so orderly that there be no confusion, much less can they do it with joy; and so far their power does extend: for although that is not required of the governors but of the people, that the ruler's office be done with joy; yet because it is required of the people, they sin if they hinder it; therefore the rulers have power to enjoin it. But if it can go beyond this limit, then it can have no natural limit, but may extend to sumptuousness, to ornaments of churches, to rich utensils, to splendour, to majesty; for all that is decent enough, and in some circumstances very fit. But because this is too subject to abuse, and gives a secular power into the hands of bishops, and an authority over men's estates and fortunes, and is not necessary for souls, and no part of spiritual government, it is more than Christ gave to His ministers.

§ 21. This also is to be added, that because this power is derived to spiritual rulers upon the account of reason and experience of things and the duty of the people, that the rulers should be enabled to give an account of their charges with joy, therefore it is only left to the people to do it or not, under the pain of a sin; but they are not to incur spiritual censures upon the stock of non-compliance in things not simply necessary or of essential duty. For to compel them to advantages will bring but little joy to the ruler: he must secure the main duty whether they will or no; that himself is to look to, and

[r] [1 Cor. xiv. 40.]

therefore to use all the means God hath put into his hand; and for that he must look for his joy when he comes to give up his account: but that he himself should do his duty with joy, that is, with advantages, with ease, with comfort, being a duty wholly incumbent on the people and for their profit, if they will not comply they sin; and 'it is not profitable for them,' saith the apostle[g], that is, they lose by it; but to this they are at no hand to be constrained, for that will destroy his joy as much as the letting it alone.

§ 22. Beyond this the bishop hath no authority to command what he can persuade by argument, he is to take care it be well and wisely, to the glory of God and the good of His church, to the edification of all men that are interested, and the special comfort and support of the weak. The sum of which power is excellently summed up by S. Paul[h]: "For ye know what commandments we gave you by the Lord Jesus; for this is the will of God, even your sanctification, that ye abstain from fornication . . that no man defraud his brother." In these things the spiritual power is proper and competent. But the apostle adds, "He therefore that despiseth, despiseth not man but God, who hath also given us His holy Spirit." That is, in those things which are certainly the laws of God the bishop is to rule entirely according to the power given him. But because God hath not only given His authority, but His spirit too, that is, He hath given him wisdom as well as power, it cannot be supposed to be for nothing: whatever he wisely orders, that is of necessary relation to the express command of God, or is so requisite for the doing of it, that it cannot be well done without it by any other instrument, nor by itself alone. In this it is to be supposed that the spirit of government which God hath given to His church will sufficiently assist, and therefore does competently oblige: less than this the Spirit of God cannot be supposed to do, if it does any thing beside giving and revealing the express commandment and necessary duty.

§ 23. Beyond these strict and close measures there is no doubt but the Spirit of God does give assistance: as the great experience of the church, and the effects of government, and the wise rules of conduct, and the useful canons, and the decent ceremonies, and the solemn rites, and the glorifications of God consequent to all this do abundantly testify. But yet beyond this, the bishops can directly give no laws that properly and immediately bind the transgressors under sin: and my reasons are these;

§ 24. 1) Because we never find the apostles using their coercion upon any man but the express breakers of a divine commandment, or the public disturbers of the peace of the church and the established necessary order.

§ 25. 2) Because even in those things which were so convenient that they had a power to make injunctions, yet the apostles were very backward to use their authority of commanding; much less

[g] [Hebr. xiii. 17.] [h] [1 Thess. iv. 2, 3, 6.]

would they use severity, but entreaty. It was S. Paul's case to Philemon[i] before mentioned; "Though I might be much bold in Christ to enjoin that which is convenient, yet for love's sake I rather entreat thee."

§ 26. 3) In those things where God had interposed no command, though the rule they gave contained in it that which was fit and decent, yet if men would resist, they gently did admonish or reprove them, and let them alone. So S. Paul[j] in case of the Corinthian men wearing long hair, "If any man list to be contentious, we have no such custom, nor the churches of God:" that is, let him choose; it is not well done, we leave him to his own liberty, but let him look to it.

§ 27. 4) If the bishop's power were extended further, it might extend to tyranny, and there could be no limits beyond this prescribed to keep him within the measures and sweetness of the government evangelical: but if he pretend a divine authority to go further, he can be absolute and supreme in things of this life which do not concern the spirit, and so fall into dynasty, as one[k] anciently complained of the bishop of Rome, and change the father into a prince, and the church into an empire.

§ 28. But this hinders not but that the power of spiritual rulers may yet extend to a further use, not by a direct power of command, or of giving laws, but by all the indirect and collateral ways of obligation, as of fame, consent, reputation of the man, the reverence of his person, and the opinion of his wisdom and sanctity, by voluntary submission, and for the avoiding scandal: when any of these causes of action or instruments of obligation do intervene, the bishop does not directly bind, but the people are bound: and their obligation from all these principles are reduced to two heads: the matter of scandal, in which case under pain of sin they must obey in all lawful things, when by accident and the concourse of emergent causes it is scandalous to disobey: and the other is, their own consent; for however it be procured fairly, if they once have consented, they are become a law unto themselves, and so they remain till this law suffers diminution as other laws do that die; of which I am afterwards to give account.

There is one way more by which ecclesiastical laws do bind; but this is the matter of the next rule.

[i] [Philemon 8, 9.] [j] [1 Cor. xi. 16.] [k] [Socrates,—see p. 233 above.]

RULE V.

WHEN THE CANONS OR RULES OF ECCLESIASTICAL RULERS ARE CONFIRMED BY THE SUPREME CIVIL POWER, THEY OBLIGE THE CONSCIENCE BY A DOUBLE OBLIGATION.

§ 1. Τὸ *νομοθετεῖν ἀνεῖται τοῖς βασιλεῦσι*, say the Greek lawyers: 'the power of making laws,' viz., of determining things not commanded by God, or of punishing prevarications against God's laws or their own, 'is granted to kings.' And therefore as secular princes did use to indict or permit the indiction of synods of bishops, so when they saw cause, they confirmed the sentences of bishops and passed them into laws. Before the princes were christian the church was governed by their spiritual guides, who had authority from God in all that was necessary, and of great conveniency next to necessity; and in other things they had it from the people, from necessity and from good will, by hope and fear, by the sense of their own needs, and the comfort of their own advantages. It was *populus voluntarius*, the people came with free-will offerings, and were at first governed by love as much as now they need to be by fear and smart. But God was never wanting to His church, but made provisions in all cases and in all times. Of that which was necessary Christ left in His ministers a power of government: and in that which was not primely necessary, but emergently and contingently came to be useful and fit, He only left in His ministers a power to persuade; but He gave them an excellent spirit of wisdom and holiness by which they did prevail, and to the people the spirit of love and obedience; and these together were strength enough to restrain the disobedient. For as in the creation there was light before the sun, that we might learn that the sun was not the fountain of light, but God; so there was a government in the church even before the princes were Christians, that the support and ornament of God's church might be owned as an efflux of the divine power, and not the kindness of princes. But yet as when the light was gathered and put into the body of the sun, we afterwards derived our light from him, and account him the prince of all the bodies of light; so when the government external of all things was drawn into the hands of princes becoming Christians, to them the church owes the heat and the warmth, the light and the splendour, the life of her laws, and the being of all her great advantages of maintenance and government. At first the church was indeed in the commonwealth, but was reckoned no part of it, but as enemies and outlaws were persecuted with intolerable violence; but when the princes of the commonwealth became servants of Christ, they were also nurses of the church, and then it became a principal part of the republic, and was cared for by all her laws.

§ 2. For this first way was not like to last long; for good manners soon corrupt, and a precarious authority, though wise and holy, useful and consented to, was not stable as the firmament of laws that could compel: and yet it became necessary by new introduced necessities that there should be rules and measures given in things relating to the church, concerning which God himself had given no commandment; as concerning order in synods and conventions ecclesiastical, the division of ecclesiastical charges, the appointment of underministries in the church, the dispensation of revenues, the determination of causes and difficulties in manners of speaking or acting, and whatsoever was not matter of faith or a divine commandment: in all that new necessities did every day arise, and the people were weary of obeying, and the prelates might press too hard in their governing, or might be supposed to do so when they did not, and the people's weariness might make them complain of an easy load; and it was not possible well to govern long by the consent of the people who are to be governed. It pleased God to raise up a help that should hold for ever, and when the princes became christian and took care of all this, that is, of all the external regiment of the church, of all that was not of spiritual nature and immediate necessary relation to it, then the ecclesiastical laws were advised by bishops and commanded by kings; they were but rules and canons in the hands of the spiritual order, but laws made by the secular power. And now these things are not questions of the power of the clergy, but a matter of obedience to kings and princes.

§ 3. These canons before the princes were christian were no laws further than the people did consent; and therefore none but the men of good will, the pious and the religious children of the church did obey: but now that princes have set the cross upon their imperial globes and sceptres, even the wicked must obey; all are tied by all manner of ties, and all can be compelled that need it. These ecclesiastical laws so established the Greeks call Διατάγματα, θεσπίσματα, χρυσόβουλλα, κυροῦντα τὰς συνοδικὰς ἀποφάσεις, 'edicts, orders, and golden bulls, commanding or making into laws the sentences and rules of synods.' The ἀποφάσεις, that's the effect and production of bishops in their conventions; that is, they have *jus pronunciandi quid sanctum, quid non*, 'a right of pronouncing what is for God's glory and the interests of religion, and what not:' but the τὸ κῦρος καὶ τὸ κράτος, 'the establishment and the command,' belong to princes. The synod hath a κρίσις or 'a right of judging,' but the ἐπίκρισις or 'confirmation' of it into a law belongs to the civil power. So we find in a synodal epistle *de non avellendis episcopis a sua metropoli*, εὑρέθη τι καὶ τοιοῦτον γενόμενον κρίσει συνοδικῇ, καὶ ἐπικρίσει βασιλικῇ κυρωθὲν, 'some such thing as this hath been found done by the decree or judgment of a synod, but established by after-judgment of the king.' To the same sense are those words of ἐπιστάλματα applied to the bishop's canons, and προστάγ-

ματα to the king's edict upon them; and therefore the emperors and princes were said ἐπισφραγίζειν τὰ κεκριμένα[l], 'to put the seal of their authority to the decrees of the fathers[m].'

§ 4. For it was never known in the primitive church that ever any ecclesiastical law did oblige the catholic church, unless the secular prince did establish it. 'The Nicene canons became laws by the rescript of the emperor Constantine,' says Sozomen[n]. He wrote an epistle and commanded that all churches should keep Easter by the canon of the Nicene fathers, and made it capital to keep any of the books of Arius. When the council of Constantinople was finished the fathers wrote to the emperor Theodosius, and petitioned[o] *ut edicto pietatis tuæ confirmetur synodi sententia*, 'that he would be pleased to confirm the sentence of the council by his edict:' *ut quemadmodum literis quibus nos vocabas ecclesiam honorasti, ita etiam decreta communibus suffragiis tandem facta sigillo tuo confirmes.* The emperor had done them favour and honour in calling them together, and they petitioned he would also confirm what they had agreed upon, and by his seal make it authentic. The confirmation of the canons and decrees of the great Ephesine council by the emperor is to be seen at the end of the acts of the synod; and Marcian the emperor[p] wrote to Palladius his prefect a letter in which he testifies that he made the decrees of the council of Chalcedon to become laws. For having forbidden any person to make assemblies and orations of religion in public, he adds this reason, *Nam et injuriam facit reverendissimæ synodi judicio, si quis semel judicata ac recte disposita revolvere et publice disputare contenderit; cum ea quæ nunc de christiana fide a sacerdotibus qui Chalcedone convenerunt per nostra præcepta statuta sunt, &c.*—'for he does injury to the judgment of the most reverend synod, if he shall unravel and dispute the things which were there judged and rightly disposed; since those things appointed by the bishops met at Chalcedon concerning christian faith were commanded by us, or were appointed by our commandment.' . . *Nam in contemptores hujus legis pœna non deerit*, 'they that despise this law shall be punished.' Thus also the fathers of the fifth general synod petitioned Justinian to confirm and establish their canons into a law, in the same form which was sent to Theodosius by the bishops of the general council at Constantinople before mentioned[q]. The same prince also published a novel[r], in which he commands *vim legum obtinere ecclesiasticos canones a quatuor synodis, Nicæna, Constantinopolitana prima, Ephesina prima et Chalcedonensi expositos et confirmatos*; 'that all

[l] In act. concil. C. P. [vid. epist. synodo præfixam, tom. i. col. 808.]

[m] Vide chap. iii. rule 8. hujus libri. [p. 259.]

[n] [H. E., lib. i. cap. 19.]

[o] [Concill., tom. i. col. 807.]

[p] [Al. Valent. et Marcian. ad cives Constantinopolitanos, inter actt. concil. Chalced., part. iii. cap. 3. tom. ii. col. 659.]

[q] Vide concil. Tolet. vi. [can. 19. tom. iii. col. 608 A.]

[r] [Authent. coll. ix. tit. 14. novel. 131. cap. 1.]

the laws which were made or confirmed by the four first[s] general councils should have the force of laws:' that is, all their own canons and those of Ancyra, Gangra, Antioch, and Laodicea, which were then adopted into the code of the universal church, though they were but provincial in their original.

§ 5. So that now upon this account the ecclesiastical laws are as obligatory to the conscience as those which are made in a civil matter; and there is no difference but in the matter only: but for that there will be some advantage; for as the civil power hath authority in ecclesiastical matters, so the spiritual power hath a share in the legislative: the matter is handled by the ecclesiastics, and the law is established by the secular. And therefore if it be thought that the cognizance of these things is not proper for seculars, those that think so may be satisfied that the bishops have judged the thing already; and they that think the bishops have no power of making the law, may learn to obey, because the prince hath by his legislative established it. So one hand helps another, and both are lift up to God, but will fall heavy upon the disobedient.

SECT. II.—OF CENSURES ECCLESIASTICAL.

I have given the general measures of the legislative power of the ecclesiastical state: next to this I am to account concerning their coercitive[t] (SECT. II.), and then return to the enquiries after the more particular subjects of this power (SECT. III.), and their particular laws and their obligations upon the conscience in external order (SECT. IV.) and in matters of faith. (SECT. V.)

RULE VI.

KINGS AND PRINCES ARE BY THE TIES OF RELIGION, NOT OF POWER, OBLIGED TO KEEP THE LAWS OF THE CHURCH.

§ 1. THE laws of the church I have already divided[u] into such which she makes by a divine authority, such which concern our essential duty, in which she hath power to command and rule in her appointed manner; and into those which are external, political, and contingent, such which princes, if they please, make up into laws, but the spiritual power cannot. In the first sort, kings and princes are as much tied to obedience as the meanest christian subject. For the king, though he be supreme in government political, yet his soul is of Christ's fold, and to be conducted by a proper shepherd. It is no contradiction that the same person should be supreme, and yet obey in another regard in which he is not supreme.

[s] ['four last'—B, C, D.] [t] ['coercive'—B, C, D.] [u] [Rule 3. p. 280.]

The captain that fights in a ship commands the soldiers in chief, but himself obeys the master; and the safety of the soldiers depends upon them both: for they are distinct powers in order to distinct purposes. For kings must give an account for bishops that they live well in the political capacity, and bishops for kings in their spiritual; and therefore they must obey each other: and we find that persons of greatest honour in the days of peace, serve under captains and generals in the time of war; and when Themistius, an excellent philosopher, who from his chair did rule and dictate wise things, and give laws to the understandings of his auditors, and was admired by his prince, was by the emperor Constantius advanced to a prefecture, in an excellent epigram[s] he says to himself,

Νῦν ἀνάβηθι κάτω, καὶ γὰρ ἄνω κατέβης,

'Now ascend downwards, for thou hast already descended upwards.' The same dignity is above and below in several regards. But in this there is no difficulty, because the souls of princes are of equal regard, and under the same laws of God, and to be cleansed and nourished by the same sacraments, and tied to the same duty by the commandments of God, as any of the people; in this there is no difference.

§ 2. But in matters not of necessary duty, not expressly required by God's law, and the necessary, unavoidable, immediate consequents of it, there being no laws but what themselves have made, they are no otherwise obliged than by their own civil laws, of which I have already given account. This thing is particularly noted by Balsamo[t] upon the sixteenth canon of the council of Carthage, who affirms that by the reason of the power given to princes from God they are subject neither to their laws nor canons. And of this latter he gives this instance, that although by the twelfth canon of the council of Chalcedon it was decreed that no city should for the future acquire the title of a metropolis, yet after this Justinianea Prima was made an archiepiscopal seat and had metropolitical rights, to the diminution of the former rights of Thessalonica: but Balsamo instances in divers others. There was an ancient canon of great celebrity in the church, that every city should have a proper bishop: but the bishops of Isauropolis and Tolma besides their own had others; so had the bishops of Lichfield and of Bath in England: they had other cities under their jurisdiction which had no bishops in propriety. For if kings did give limit to their dioceses they might divide again, and give a new limit; since it is not in kings as it is in people. The power that goes from the people is like water slipped from their hands, it returns no more, and does not abide in the first place of its efflux; but when an act of power passes from the king, any deputation or trust, any act of grace or delegation of jurisdiction, it is like heat passing from the fire, it warms abroad, but the heat still dwells

[s] [Jacobs, anthol. Græc., tom. iii. p. 112.]

[t] [Apud Bevereg. synodic., tom. i. p. 538.]

at home. It is no more the less, than the sun is for the emission of its beams of light.

§ 3. And this is apparent in all the privileges and concessions made to the church, which are as revocable as their duty is alterable. For princes are so far from being obliged to perpetuate such rights which themselves have indulged, that it is a ruled case, and the Greek fathers[u] sometimes make use of it to this very purpose, ὁ δωρησάμενος βασιλεὺς, εἰ ἀχαριστίας παρεμπέσοι λόγος, ἀναλαμβάνει τὴν δωρεὰν, 'if a king hath given a gift, he may recall it in case the beneficiary proves ingrateful.' The same with that in the feudal laws of the Lombards[v], *Feudum amittit qui feudum sciens inficiatur:* if he wittingly denies the fee, or refuses homage, he loses it. But this depends upon the reasons of the second rule in the third chapter of this book.

§ 4. But although in strict right the king's laws oblige him not, yet because, *de bono et laudabili*, he is in the senses above explicated obliged to his civil laws, therefore much more is he tied to the observations and canons of the church, as being specifications of religion, instances of love to God, significations of some internal duty, or outer guards to piety, great examples to the people and honours to the church of Christ, and that which above all external things will enable the rulers and guides of souls to render their account with joy; and the king shall never so well promote the interests of religion by any thing, as by being himself subject to the religion: for who will murmur at those laws which the king himself wears in a phylactery upon his forehead and his wrists? *Facere recte cives suos princeps optimus faciendo docet; cumque sit imperio maximus, exemplo major est,* said Velleius Paterculus[x]. This is most of all true in religion, whose laws look too like policy when they are established only by penalties, but they are accounted religion when they are made sacred by example. To which purpose is that of Tacitus[y], *Obsequium in principem et æmulandi amor validiora quam pœna ex legibus.* It is duty to our prince, and it is our honour to imitate the example of the prince; and these prevail more than penalties. *Hæc enim conditio principum, ut quicquid faciant, præcipere videantur,* says Quintilian[z]. Their example is the best law.

Sic agitur censura, et sic exempla parantur,
Si judex[a], alios quod jubet[a], ipse facit[b].

So laws and judgments and good manners are best established, when by the examples of kings and supreme judges they are made sacred.

Add to this, that the laws of religion have most of them the

[u] Leunclav. Βασιλικ. [lib. xlvii. tit. 2. l. 10. p. 416.]
[v] [Feud. const., lib. ii. tit. 26. l. 3.]
[x] [lib. ii. cap. 126.]
[y] Annal., lib. iii. [cap. 55.]
[z] Declam. iv. [apud Lips. polit., ii. 9.]
[a] ['vindex,' 'monet,' edd.]
[b] [Ovid. Fast., lib. vi. 647.]

warranty of some internal grace or other, and are to be reckoned in the retinue and relation of that virtue, and therefore cannot in many instances be broken without some straining of our duty to God, which is by the wisdom and choice of men determined in such an instance to such a specification. But this is to be understood only in such laws which are the προφυλακαὶ, 'outerguards,' the exercises of internal religion, not in the garments and adornments of the relatives and appendages of religion. If a prince despises the festival of the church, nothing but a competent reason will excuse him from being or at least seeming irreligious. And in whatsoever instance he hath made or consented to laws of religion, if by them he can suppose the people may serve and please God, he is much more obliged than they; not by the duty of obedience, for he owes none, but by the virtue of religion: for besides that his soul must live or die by greater measures and exactions of those virtues which bring the people unto heaven, every action of his that deserves an ill report, it is but scandal in the lesser people, but to him it is infamy. For the king's escutcheon is blazoned otherwise than that of his subjects: the gentry by metals, the nobility by precious stones, but kings by planets. For in a king there is nothing moderate. *Cavere debet qualem famam habeat, qui qualemcunque meruerit, magnam habiturus est,* said Seneca[b]. His fame, let it be good or bad, it will certainly be very great.

§ 5. The sum is this: kings are so tied to their own ecclesiastical laws, that they must take care they be not despised by their example; that the religion designed by them be promoted, that that part of the commonwealth which most secures to them obedience and peace, and procures them the most and greatest blessings, be not discouraged or disadvantaged: but they are not so tied that every act of omission is imputable to them, though it have no other cause but the use of his liberty; for in this his duty differs from that of his subjects: for obedience which the subject owes is a part of justice, and that hath no degrees, but consists in an indivisible point, where it can be practised, and where it can be understood; for he is unjust that does one act of injustice. But religion hath a latitude of signification and instances, and a man may be very religious who yet does not keep a saint's day where by obedience he is not bound; which is the case of kings. Therefore what Seneca[c] said of the cares of kings, may be said of the external observations of the laws of religion, *Remissum aliquando animum habebit, nunquam solutum.* He may remit something of the strict observance, but he must never esteem himself wholly quit.

§ 6. But this is to be understood only in externals and rituals: concerning which one said excellently, *Pleraque ex iis magis ad morem quam ad rem pertinent.* They are nothing of the substance

[b] De clementia. [lib. i. cap. 8. tom. i. p. 438.] [c] [Apud Lips. polit., ii. 6.]

of religion, but only appendages, and manner, and circumstances; and therefore, *Sapiens servabit ea tanquam legibus jussa, non tanquam diis grata;* 'a wise man will observe rituals because they are commanded by laws, not that they are pleasing to God;'—they are the words of Seneca quoted by S. Austin[d]. Since therefore these are wholly matter of obedience, kings are free, save only when they become bound collaterally and accidentally. But in matters of essential duty, the king hath equally with his subjects no liberty, but much more direct duty, and many more accidental obligations. The whole affair is well enough expressed by Cicero[e], *Religioni parendum est, nec patrius mos contumaciter repudiandus.* The prince must obey religion, and he must not despise the customs and the manners of his country; that is, in the better words of our blessed Saviour[f], "these things they ought to do, and not" wholly "to leave the other undone."

§ 7. But the liberty of princes in these ecclesiastical laws of order, and circumstance, and ritual observances is very apparent in the practice of the Hebrew kings, who yet possessed this liberty, that even in the rituals of the divine ordinance they sometimes did dispense. Thus David eat the shew-bread[g]; and Hezekiah permitted some that were unclean[h] to eat the passover, otherwise than it was written[i]; only Hezekiah prayed to God not to impute it to them, and gave them way: and under his reign the Levites did kill the sacrifice twice[k], which was only lawful for the priests to do[l]. But it was a favourable case, because the priests were but few, and the sacrifices were very numerous: and if it be (as the Greek expression is) lawful χαλάσαι τι τῆς ἀκριβείας, 'to loose a little of the exactness' of the rituals of the divine appointment, it is certain where the man is the lawgiver, he can much more use the liberty. But it is not good to do all that is lawful.

RULE VII.

IT IS NOT LAWFUL FOR THE ECCLESIASTICAL POWER TO EXCOMMUNICATE CHRISTIAN PRINCES, OR THE SUPREME CIVIL POWER.

§ 1. In the sentence and penalty of the lesser excommunication, as it is used in the church, there are three portions of evil. In one

[d] Lib. vi. de civit. Dei. [cap. 10. § 3. tom. vii. col. 160 B.]
[e] De divinat., lib. ii. [cap. 33.]
[f] [Matt. xxiii. 23; Luke xi. 42.]
[g] [1 Sam. xxi. 6.]
[h] [Levit. vii. 20.]
[i] [2 Chron. xxx. 18.]
[k] [2 Chron. xxix. 34, and xxx. 17.]
[l] [Levit. i. 5.]

the bishop is the author or minister, in the other the people, and in the third the prince. The first is a denying to minister the holy mysteries. The other is a withdrawing from the communion and conversation of such a person: which although it be done most of all in the greater excommunication, yet it is done also in some proportion in the less, for emendation of the erring brother; not for extermination, as appears in the apostolical precept given to the church of Thessalonica, 2 Thess. iii. verse 6, and 14, 15. And the last is, the supervening temporal punishments by which princes use to verify the just sentences of the church against refractory criminals.

§ 2. Concerning the last, it is certain it wholly is owing to the power and favour of the prince; who by that favour is not supposed to lay violent hands upon himself, who if he did, could quickly take them off again: however the church inflicts not them by her own authority, but by that of the prince, who will not, like the tree in the fable, lend a stick to the hatchet, to be hewn down or hurt by it afterwards.

§ 3. But then concerning that part which is inflicted by the people, which is abstinence from the society of the offender till he repent and make amends and get his pardon, it is infinitely certain the church cannot inflict that on kings; because it is destructive of the duty which the people owe to their prince, and of the rights which the prince hath from God independently from the religion.

§ 4. Besides this, nothing ought to be done to the dishonour of the supreme power, to whose happy government fame is almost as necessary as power: and the imposing upon them disgraceful penalties is κρίσις βλασφημίας, 'a note of dishonour and blasphemy;' for they are to esteem their king as a heathen and a publican, from whose society they are to estrange themselves as from a pestilence. *Invisum semel principem seu bene seu male facta premunt*, saith Tacitus[m]. If he once fall into such a calamity and dishonour, whether he do well or ill afterwards, it shall be evil to him.

§ 5. And yet further, the power of assemblies and public meetings is wholly by the laws and permission of kings; and nothing is more unreasonable than that any man should interdict kings from public meetings by whom himself hath leave to meet publicly. And therefore we find imperial laws making provisions in this very particular, and so far from being subject to any thing of this nature, that the emperors gave orders and strict measures to the bishops when they should, and whom they should or should not separate from churches and communions; as is to be seen *l.* 30. *Cod. de episc. et clericis*[n], and in the hundred and twenty third novel of Justinian[o]. For even in those actions of bishops in which themselves have

[m] [Hist., lib. i. cap. 7.]
[n] [lib. i. tit. 3.]
[o] [Authent. coll. ix. tit. 6. cap. 11.]

liberty and divine authority, yet the supreme civil power hath external jurisdiction. Thus Mauritius the emperor commanded Gregory the great, bishop of Rome, to communicate with John of Constantinople; and anciently in France the princes were wont to compel the clergy to officiate; and when the pope had interdicted the kingdom of England, the king compelled the priests and bishops to open their churches: so it is in Holland, and so in Venice, and so in all places where kings know their power and their interest and their duty.

§ 6. For if excommunication be only an act of caution and prudence, it is very great prudence not to involve kings in it, lest they be provoked by the evil usages of the church; and if it be nothing else, certainly it cannot be necessary to be done at all. But if it be an act of external jurisdiction, it derives from kings, and therefore they are not under it but over it: for no coercion in the hands of man ought to touch those who are reserved only for the judgment of God. *Apud serenissimum regem opus est exhortatione potius quam increpatione, consilio quam præceptis, doctrina quam virga,* said Hildebertus the bishop[p]; 'the king is to be exhorted, not reproved; counselled, not commanded; and to him not a rod, but doctrine is to be used:' and Ivo bishop of Chartres[q] said the same thing; 'Kings if they abuse their power are not to be provoked; but in case they refuse the admonition of bishops, they are to be left to the divine judgment, where they will be punished the more severely, by how much they were the less obnoxious to human monitions.' So Gregorius Turonensis, *Si tu excesseris, quis te corripiet? si autem nolueris, quis te damnabit, nisi is qui se pronunciat esse justitiam?* He spake to king Chilperic: 'If thou beest exorbitant, who shall correct thee? if thou refusest, who shall condemn thee, but He only who is the everlasting righteousness?' For if S. Paul gave in charge to Timothy that each person should receive an impression and emanation from the pastoral charge according to his quality, and commanded that he should "not rebuke an elder, but intreat him as a father[r];" much less would he have permitted any to have punished the father of the country and his own superior, and him who is less than none but God, and by whom himself can rule others in external actions, and who in these very administrations is superior, and can give laws, and inflict penalties, and is judge and the remedy of all abuses.

§ 7. And if concerning this enquiry we consult the doctrine and practices of the fathers in the primitive and ancient churches, we shall find that they never durst think of excommunicating kings. They had no power, no right to do it. *Nam sacerdotis tantum est*

[p] [Epist. xxxiii. col. 136. ed. fol. Par. 1610.] 1708.]

[q] Epist. clxxi. [p. 293. ed. 8vo. Par.

[r] [1 Tim. v. 1.]

arguere, et liberam præstare admonitionem, saith S. Chrysostom[s], 'priests can only reprove and argue, and give a free admonition:' and therefore the first supreme prince that ever was excommunicated by a bishop, was Henry the emperor by pope Hildebrand.

§ 8. But against this that I say now the doctors of the church of Rome make a mighty outcry, saying that Philip the first christian emperor was excommunicate and thrust amongst the penitents[t]; that Babylas the bishop of Antioch thrust the emperor Decius with his hands against his breast from the doors of the church[u]; that Athanasius excommunicated the prefect of Libya, and S. Basil commanded in his diocese that he should be avoided[x]; that S. Ambrose did excommunicate the emperor Theodosius[y]; that S. Chrysostom forbad Eudoxia the empress to enter into the church doors[z]; that Innocentius excommunicated Arcadius[a]; so did Synesius to Andronicus the prefect[b]; S. Austin to Bonifacius[c]; pope Symmachus to Anastasius the emperor[d]; pope Vigilius to Theodora the empress[e]; Gregory the second to the exarch[f]; Gregory the third to Leo Isaurus[g]. Instances enough, if they be right and true, to shew that the fathers were of another mind than the rule pretends.

§ 9. But in this heap I must separate what is true and certain from what is false and uncertain, and give an answer to them, and the rest will not trouble us. The story of the emperor Philip is vehemently suspected: but if it were true, yet it was no excommunication, but his own submission to the discipline of penitents, to which, saith Eusebius, he was persuaded by the bishop. And the same was the case of S. Ambrose to Theodosius[h]: the prince was persuaded to it, but it was only to do his repentance after the manner of the penitents in those days; the bishop only refused to celebrate in the presence of the emperor if he would not give testimony of his repentance towards God. This the emperor did, because he was a good man, and things were then in such a conjunction, that there was nothing amiss; but that S. Ambrose could not have verified his power if the emperor had been unwilling, and the emperor did do more than was necessary. But S. Ambrose said that he had his

[s] Homil. iv. de verbis Isai. 'Vidi Dominum.' [tom. vi. p. 128 D.]

[t] Euseb., lib. vi. cap. 27. [al. 34.]

[u] Chrysost. adv. gentes. [tom. ii. p. 545.]

[x] Basil. epist. xlvii. [al. lxi. tom. iii. p. 155.]—Paulin. apud Baron., A.D. cccxc. [tom. iv. p. 619.]

[y] Theod. hist. eccles., lib. v. cap. 17. [al. 18.]

[z] Leo Aug. orat. de vita Johan. Chrysostom. [cap. 20, inter opp. Chrysost. ed. Savil tom. viii. p. 282. fol. Eton. 1612.]

[a] Niceph. hist. eccles., lib. xiii. [cap. 34.]

[b] [vide Synes. epist. 72. p. 218 C.]

[c] Aug. epist. vi. in append. [tom. ii. append. col. 3 C.]

[d] [Baron. annal., A.D. DII. n. 30.]

[e] Greg. I. lib. ii. epist. 36. [al. epist. 51. tom. ii. col. 615 C.]

[f] Anastas. biblioth. in Greg. II. [p. 69. ed. fol. Par. 1649.]

[g] [Zonar. annal., lib. xv. tom. ii. p. 105. ed. fol. Par. 1687.—Theoph. chron. p. 342. ed. fol. Par. 1655.]

[h] Ultro a communione abstinuisse Theodosium aiunt Ruffinus, lib. ii. cap. 18. et Waremund. ab Erenb. c. 2. de subsid. reg. n. 35. et seqq. [Verisimilia theologica, &c., pp. 36, 7. 8vo. Franc. 1606.]

warrant to use the emperor so from a vision. His warrant was extraordinary, for he had no ordinary power or commission. The excommunications of the prefects by S. Athanasius, S. Basil, S. Austin, Synesius and Gregory the second do not come home to the enquiry, because the prefects were but subjects, and had not the privilege of supreme princes. The fact of Babylas to Decius was not excommunication: for Decius was a heathen, and the church hath nothing to do with them that are without; but Babylas was zealous and fierce, and acted with the spirit of a martyr, to which he hastened by his fervour. S. Chrysostom indeed did that to Eudoxia which did not become him, and which he had leisure and cause enough afterwards to repent: he did in anger what himself in the sober hours of his life professed to be more than he could justify. That of Innocentius to Arcadius is of no credit, and so is that of Symmachus to Anastasius, as being only seen in the epistles of the popes of Rome; concerning which there is nothing certain, but that very many of them are certainly spurious. The pretended excommunication of Theodora by Vigilius hath no testimony. *Contra Theodoram . . vel acephalos Vigilius pronunciavit damnationis sententiam,* said Gregory[i]. But this was nothing but a condemnation or rejection of the heresy of the Acephali, with which she was a partaker. And the like was the case of Leo Isaurus; it was *sententia damnatoria,* a condemnation of his opinion, called by Zonaras[k] *ἀνάθεμα συνοδικόν.* But these things are only pretended to make noises. Pope Hildebrand was the first that ever did any thing of this nature; as is expressly affirmed by authors of great credit, by Otho Frisingensis, by Godefridus Viterbiensis, and by Onuphrius, who counted all the other pretences either fabulous or to no purpose.

§ 10. But yet there is a third portion of excommunication, which is a denying to administer the holy communion to princes of a scandalous and evil life; and concerning this there is no question but the bishop not only may, but in some cases must do it. *Nolite dare sanctum canibus,* said Christ, "Give not that which is holy to dogs;" and "cast not pearls before swine[l]." But this is not an act of jurisdiction, punishment, or coercion, but of charity to the prince and duty in the bishop. It is just as if a physician should refuse to give drink to an hydropic patient: he may have it if he will be willing to die, but if the other refuses his ministry in the reaching it, he is charitable and kind, not imperious and usurping. For whatsoever is in the ecclesiastical hand by divine right, is as applicable to him that sits upon the throne as to him that sits upon the dunghill. But then the refusing it must be only by admonition and caution, by fears and denunciations evangelical, by telling him his unfitness to communicate, and his danger if he do: but if after this separation by

[i] Lib. ii. ep. 36. [al. 51. tom. ii. col. 15 C.]

[k] [Ubi supra.]

[l] [Matt. vii. 6.]

way of sentence and proper ministry the prince will be communicated, the bishop hath nothing else to do but to pray, and weep, and unwillingly to minister. S. Gregory's case with Mauritius the emperor was like this. The prince commanded him to be the minister to hand an unlawful edict to the churches: the bishop told the prince it was a sin which the prince went about; prayed, admonished, declaimed, did all that he could to hinder it, and then obeyed; that is, he did all he could to God, by using all his authority, the word of his proper ministry, and then all that he owed to the prince, by submitting his external ministry to his command. The unlawful proclamations and edicts of a true prince may be published by the clergy in their several charges; but yet they must not conceal from the people any thing of their duty, nor yet from their prince when they can declare it. It was also the case of Saul and Samuel. The king desired Samuel to join and communicate with him in the service of the Lord[m]. He with the liberty of a prophet refused at first, and declared the heinousness of Saul's sin; but at last, when the king's will was pressing and importunate, Samuel did obey his voice and did join with him. Ivo bishop of Chartres[n] tells that in such cases where princes will not comply with the customs and disciplines of the church, the bishops must do their duty by saying, *Nolo te fallere; introitum hujus visibilis ecclesiæ periculo tuo te habere permitto: januam regni cœlestis tali reconciliationi tibi aperire non valeo:* 'Sir, I will not deceive you; at your peril be it if you will come into the holy place to partake of holy mysteries. I declare to you that this ministry (of the communion) is not any reconciling of you to God. I cannot do that unless you repent.' But the reason of this is wholly upon this account, because the ecclesiastical state hath no proper coercion by divine right, but is a minister of the divine coercion, of spiritual promises and threatenings; their power is spiritual and internal, it hath its effort upon the spirit, and not upon the outer man, and therefore is to proceed by methods fitted to the spirit, that is, by reason and argument, by the fear of God and the terror of His threatenings, by the love of God and the invitation of His promises. But all the ministries and compulsions about the external is the gift and leave of princes: and therefore it descends, but ascends not unless they please (of which by and by). *Admoneri quidem possunt, increpari, argui a . . discretis viris: quia quos Christus in terris rex regum vice sua constituit, damnandos et salvandos suo judicio reliquit,* said the church of Liege in their epistle to Paschalis[o]: 'kings may be admonished and reproved and argued by discreet persons; but they whom Christ the king of kings hath appointed to be His vicars on earth are entirely to be left to His judgment.'

[m] [1 Sam. xv. 25.]
[n] [Epist. clxxi. p. 295.]
[o] [Harduin. concill., tom. vi. part. 2. col. 1777 D.]

Upon the likeness of matter it is to be enquired:

§ 11. Whether the guides of souls have a proper and spiritual power to enjoin penances or ecclesiastical satisfactions to a prince that hath sinned publicly.

§ 12. The answer to this depends upon the premisses. For the church when she enjoined public satisfactions, did separate from the communion those whom they thrust into the place of public penitents. Now if the bishops may not separate the prince from the communion, then neither impose those penances to which that separation did minister: but this is one of the censures of the church, and part of that coercitive power which she hath by the permission of princes and the voluntary submission and consent of good people; and therefore it cannot be done unless the prince please. In the primitive church, when this discipline was in godly use, none could be compelled to it but by conviction in public or private confession, and in both cases their own consent was either expressed or implied; and therefore much less can this be done to the supreme power whether he will or no. *Imperatoria unctione pœnitentiam tolli,* said Balsamo[p], 'from the suffering penances kings are quitted by their anointing:' and upon those words of David, "Against Thee only have I sinned," S. Ambrose[q] hath this note, 'He was a king, he was held by no laws, because kings are free from the bands of delinquents;' *neque enim ullis ad pœnam vocantur legibus, tuti imperii potestate,* 'neither are they by any laws called to penance, being safe by the power of their empire.' And since the primitive church was infinitely restrained in imposing public penances on bishops, for the honour of their order and dignity of their persons, we shall the less need to doubt of their opinion or practices concerning kings.

§ 13. But yet we find that some excellent good princes did submit to such imposition of penances, and did abstain from the public communions till they had given testimony of their repentance towards God. So the emperor Philip, προθύμως ἐπειθάρχησε[r], he of his own willing mind placed himself amongst the penitents. So did Theodosius under the discipline and conduct of S. Ambrose. But these things are but cautelously to be drawn into example, and as they give no power to the bishop, so very seldom do they advantages to kings. Henry the emperor was a sad example of it, for his affairs went into diminution, and his person into contempt, and his power into pupilage as soon as ever he had done penance at Canusium bare-footed, in a cold winter, for three days together, and had endured the insolency and scorn of Hildebrand. And when kings made themselves less, the bishops became greater without any good to the church, but not without much detriment to religion.

[p] Ad can. xii. synodi Ancyranæ. [Bevereg. synodic., tom. i. p. 385 D.]

[q] [Apol. David. cap. x. tom. i. col. 692 F.]

[r] [Euseb., ubi supra.]

§ 14. But neither may princes be reproved publicly: for if he will not be obedient to the will of God in the voice of His ministers, publicly teaching, or privately admonishing and prudently reproving, he that goes about to reprove him publicly, intends by that means by some indirect coercion to compel him, either by shame or by fear; neither of which ought to be imposed by a subject on the prince. For it is to be observed that reproof is a part of empire and superiority, and differs not from teaching, save only that it is *manus linguæ*, it is 'the hand of the tongue[s],' not the voice only. He that reproves teaches only minors: and though kings are so in respect of the conduct of their souls, yet it must not be done to them but very sparingly, because it can very hardly be done without diminution of their dignity; and teaching or declaring their duty will do their work for them if they please, and if they do not please, he that reproves will do the prince no good, but he shall hurt himself, and shall not be a martyr when he is smitten. Let no man therefore pretend zeal for God in excuse of any boldness more than priestly towards kings. For the work of God is oftentimes better done by a gentle hand than by a strong.

> ——— peragit tranquilla potestas
> Quod violenta nequit: mandataque fortius urget
> Imperiosa quies[t].———

And if we esteem reproof unseasonable where it is likely we may do hurt, and where it is not likely we shall do good, much more is not this course prudent to be used to kings, who may be provoked by your ungentle sermon, or may be hardened by your fire. For every prince hath not the gentleness of Antigonus, patiently to hear himself reviled: but if he had, yet it was but reason that Antigonus[u] spake when he bade the soldiers if they would revile him to go further off. And such men would do well to consider how ill themselves would take it if they were publicly in the pulpit called schismatics or incendiaries. But how and if the people be as zealous as the priest, and think it lawful to call their king by all the names of reproach which they hear in the sermons of the ministers? and if the bishop calls a spade a spade[v], it is very possible the people may do so too, for they are soon taught to despise their rulers, and then it is to be remembered what Aristotle[w] says, ἐκ τοῦ καταφρονεῖσθαι πολλὰ γίνονται τῶν καταλύσεων. If they once come to despise their prince, they will soon unclasp his royal mantle[x].

§ 15. It is true that the ministers of religion are "stewards of the mysteries of God," and "embassadors for Christ:" and though I cannot say that they who upon this account think they have power publicly to reprove vicious kings, and in plain language give names

[s] Compare vol. iv. p. 302, and Prov. xviii. 21, ed. vulg.]

[t] Claud. in paneg. Mallii. [239.]

[u] [Plutarch. de ira cohib., tom. vii. p. 794.]

[v] [Philipp. apud Plutarch. apophth., tom. vi. p. 678.]

[w] Pol., lib. v. cap. 10. [tom. ii. p. 1312.]

[x] [Compare p. 17 above, and vol. viii. p. 353.]

to their vices and publish their shame, do overvalue their dignity, for that cannot easily be done; yet I say they use it incompetently and imprudently; for the effect of this power and dignity is not to upbraid, or to disgrace, but to edify and do good to all men according to their capacity: and therefore S. Paul, when he had declared his office and commission to be Christ's 'embassador,' he adds, as the full, express, and proper issue of that power, "we pray you in Christ's stead to be reconciled to God."

§ 16. The old prophets took liberty, and were bold in their reproofs, and troubled kings; and the people sometimes were stirred too much upon such accounts: but when the prophets were charged with sedition, they only gave in answer the express commandment of God. And therefore it was that Amos[y] being very bold was bidden not to "prophesy any more" at Bethel, "because it was the king's chapel and the king's court," and he was forced to plead a special mission; which the priests had not, and therefore we do not find that ever they used any such licence and freedom of reproof, except in such cases in which they also became prophets; as it happened to Jehoiada, 2 Chron. xxiv. 20, and that's the very case of the ministers of the gospel, who unless they had a special commission, must teach according to the duty and obedience, the gentleness and prudence of the religion; lest it be said to them as was said by king Amaziah to a bold man that spake openly to him[z], "Have they made thee the king's counsellor? cease thou, why should they smite thee?"

§ 17. Now in this there can be the less doubt, for they mistake it that suppose this to be a question of duty; it is only an enquiry after the manner of doing the duty: and therefore although for the former reasons this manner of doing their duty is not fit, yet it is necessary that the duty should be done. For *miser est imperator cui vera reticentur:* no misery is greater than that kings shall not be taught their duty. They must be taught it all; and in this no liberty, if it be prudently conducted, can become licentious. To which purpose the bishops and ministers of religion must thus comport themselves to kings.

§ 18. 1) Let the public doctrines be instructive, but not apt to raise suspicion of the prince. 2) Let it be in things certain and of evident and apparent duty. 3) Let no doctrines be fitted to private interests and partialities in the state. 4) Let no reproof of kings be in pulpits, for it is uncivil toward any *ut quis crimen audiat eo loco quo refellendi copia non sit,* as the Roman said, 'that a man should be reproved in that place where for reverence and religion sake the man may not answer for himself.' And therefore Clement the third[a] caused a clergyman to be punished because *multis coram astantibus verba quædam in depressionem officii et beneficii nostri protulit,* 'he spoke words in a public audience tending to his dispa-

[y] [Amos vii. 13.]
[z] [2 Chron. xxv. 16.]
[a] De maledic., c. 1. [Decret. Greg. IX. lib. v. tit. 26. cap. 1. col. 1616.]

ragement:' and the emperors Theodosius Arcadius and Honorius[b] made a law, *Si quis modestiæ nescius, et pudoris ignarus, improbo petulantique maledicto nomina nostra crediderit lacessenda, &c.*, 'that if any man, forgetting shame and modesty, thought fit to dishonour the emperors, he should not presently be punished: for if the man were a fool or a light person, the thing was to be despised; if he were a mad man, he was to be pitied; if injurious or angry, he might be forgiven:' but, *ad nostram scientiam referatur, ut ex personis hominum dicta pensemus, et utrum prætermitti an exquiri debeant censeamus:* the princes would have it referred to their cognizance and judgment whether such persons should be punished or no. 5) Let there be no doubtful speeches in public sermons scattered amongst the people concerning princes, for they are public seditions, not sermons. 6) When it is necessary or when it is prudent that private addresses to princes be with a sacerdotal freedom, let it be in cases of great crimes, and evidently proved and evidently vicious, neither derived from uncertain rumours of the people, nor from trifling suspicions, nor yet be in matters of secret concernment and undiscerned reason. A prince may be reproved for notorious adultery, or evident murder against the forms of law; but not so freely in the questions of wars or judicature: for the bishop's private opinion may be warrant enough for him to speak it when he is required, but not to reprove a prince upon pretence of duty, and by a spiritual authority, when the matter of fact or the question of right is uncertain.

RULE VIII.

ECCLESIASTICAL CENSURES ARE TO BE INFLICTED BY THE CONSENT AND CONCURRENCE OF THE SUPREME CIVIL POWER.

§ 1. By 'ecclesiastical censures' I mean the greater and lesser excommunication. This is a separation of a criminal (who is delated and convict by witnesses, or by confession voluntary) from the peace and communion of the church, till he hath by exterior signs signified his internal repentance: this is called the lesser excommunication. The greater is only of refractory and desperate persons, who will be subject to no discipline, make no amends, return to no goodness, and forsake no sin. These the church throws out from her bosom, and shakes the fire from her lap, and quits herself of the plague: and this is called the greater excommunication, or the *anathema*. Both these are bound by the ecclesiastical power; but the first is bound that he may be purged of his sins, the second that the church may be purged

[b] Tit. C. Si quis imper. maled. [Cod. Theodos., lib. ix. tit. 4. l. 1.]

of him. The first is bound as a man is tied fast that he may be cut of the stone; the other is bound as a criminal that is going to execution: he is bound that he may be thrown into outer darkness. Not that the church hath power to damn any man, but when she observes a man confirmed in impiety, she does antedate the divine judgment, and secures the sound members, and tells what will befall him in the day of judgment. In the first case, the penitent is like a wandering sheep, in the second he is turned a goat or a wolf; and by their own acts also as well as by the power of the keys they are both bound: the first consents to the medicine, and the reprobate hath by his own act incurred that death which the church declares; and both are acts of discipline, and directly or indirectly consequent to that power which Christ hath given to His church of binding and loosing, and to the charge of the conduct of souls.

§ 2. These two are by the fifth Roman synod under Symmachus[c] distinguished by the names of excommunication (meaning the lesser) and *anathema*. 'He that breaks the decrees of this synod, let him be deprived of the communion: but if he will not amend, *anathemate feriatur*, let him be anathema.' The same we find in the synod of Turon, *c.* 25[d], which commands that all the curses of the 108th (alias 109th) psalm be cast upon church robbers, *ut non solum excommunicati, sed etiam anathematizati moriantur;* 'that they may die not only excommunicate, but anathematized:' 'They which are never to be restored to the communion, but are to be accursed;' so Agapetus expresses it in his sixth epistle[e]. This is called 'eradication;' while the lesser excommunicates are still members of the church, as S. Austin[f] notes.

§ 3. There is yet a third sort of excommunication, brought in by zeal and partiality, a willingness to rule or to prevail; which is no part of the power given by Christ, but taken up as it happened; it is no part of jurisdiction so much as improper, not an act of the power of the keys: and that is a refusing to communicate with him who is not excommunicate, a punishing one whom we have no power to punish, a doing that which we have no power to do at all, or to such a person over whom confessedly we have no authority or jurisdiction. For when this humour was got into the manners and customs of the church they made a new distinction; and there was a *communio cum fratribus*, and a *communio cum omnibus christianis*. He that might communicate with the people might not in some cases communicate with the priests and bishops his brethren. The distinction we find in the forty-fifth chapter of the council of Auxerre[g], and in pursuance of it we find one bishop refusing to communicate with another. Thus if a bishop came not to the synod of his pro-

[c] [tom. ii. col. 985 B.]
[d] [Concil. Turon. ii. tom. iii. col. 366.]
[e] [al. epist. i. in concill. reg., tom. xi. p. 174.]
[f] Hom. i. in psal. ci. [tom. iv. col. 1098.]
[g] [tom. iii. col. 447.]

vince, it was decreed in the fifth council of Carthage[h], *ut ecclesiæ suæ communione debeat esse contentus*, 'that he should only communicate with his own diocese.' The like to which we find in the second council of Arles, *can.* 19[i], in the council of Tarracon, *can.* 6[j], and the council of Agatho, *cap.* 35[k]. Thus Epiphanius bishop and metropolitan of Cyprus refused to communicate with the bishop of Jerusalem, who was not his suffragan.

§ 4. Concerning which way of proceeding, 1) it is evident that there is no authority in it, or any thing that is like to jurisdiction, and 2) sometimes there may be duty, but 3) most commonly there is danger.

1) There is evidently no authority, for if the authority were competent and the cause just, they might proceed to excommunication. But this was sometimes done by equals to equals, as by bishop to bishop, by church to church, as by Victor to the churches of Asia, by Stephen to the churches of Africa, and by angry or zealous bishops to them that were not of their humour or opinion. Sometimes it was done by inferiors to their superior, the people withdrawing themselves from their pastor; so the Samosatenians refused to communicate with their bishop that was thrust upon them after the expulsion of Eusebius. So that evidently in this matter there is no authority to verify it.

§ 5. 2) Sometimes there may be duty; as if a bishop be a heretic or an open vicious person, his brother that is a bishop may use that liberty to him as the people might do to a brother that walks disorderly; that is, withdraw from his society, that he may be ashamed: and if his communicating with him will give countenance to his heresy, or offence to his people, he is bound then to abstain and to refuse it: and so is the people tied not to communicate with their priest or bishop, if the condition of his communion be a sin, or the countenancing of a sin. And thus we find in the annals of Spain, that a daughter of an Arian king of Spain suffered death rather than receive the communion from the hands of an Arian bishop. In her case her refusal was duty, and her suffering was martyrdom, because her father imposed his command of communicating with the heretical bishop as a secret allowance of the heresy, which in that case she was to refuse, and obey God unto the death.

§ 6. But when this does accidentally become a matter of duty, the charity of our communion is no further to be refused than we are obliged by our duty; we are not to refuse it to that person, but for that cause, and therefore in other cases and upon all other accounts we are tied to do the charity of Christians. I will not communicate

[h] Can. x. [tom. i. col. 988.]—Vide distinct. xviii. cap. 'Placuit,' &c. [can. 10. col. 81.] 'Si quis autem.' [can. 12. col. 83.] et cap. 'Si episcopus.' [can. 13.] et cap. 'Si quis episcopus.' [can. 14. ibid.]

[i] [tom. ii. col. 774.]

[j] [tom. ii. col. 1042.]

[k] [tom. ii. col. 1002.]

with a Roman priest in his worship of images, or in his manner of praying for the dead, or invocation of saints; but I may not refuse to say the Lord's prayer and the *Credo* with him, unless by chance it give offence to some weak uninstructed person. I will not receive the communion from the hands of him who was ordained by a presbytery without a bishop; because his hand is a 'dead hand[l],' and reaches me nothing; but because he is my brother, I will not refuse to give him the communion if he will require it at my hand, which was made sacred by the Holy Ghost invocated by the prayer and the lifting up of the bishop's hand. I will not come to their communions; but if they would use good forms of liturgy, and preach well, I would not refuse to communicate in such assemblies: unless (as I said before) I be accidentally hindered by some other duty drawing me off a while.

§ 7. 3) But then thirdly, when it is not an express and a clear duty, it is always a great danger, an occasion of schisms and divisions in the church, and consequently may be an infinite breach of duty, a certain violation of one virtue, for the uncertain preservation of another: it is commonly the daughter of spiritual pride, an accounting of ourselves more holy than our brethren, whom by such means we oftentimes provoke to jealousies and indignation; and so sometimes altars are erected against altars, and pulpits turn to cock-pits, and seats of scorners and of proud and illiterate declamations. Upon this account christendom hath bled for many ages. The division of the east from the western churches, and in the west the division of Rome from divers churches, the protestants and reformed, came in at this door; while one church either pretends the singularity of truth, or the eminency of authority over other churches: by which two things the church of Rome hath been author of the permanent and greatest schisms of christendom. For indeed little better can be expected when the keys of the church, which were given for the letting in or shutting out of single criminals or penitents respectively, are used to oppose multitudes. A man may lock his chamber-door, but he cannot put a lock upon the ocean: and it was wisely said of S. Austin[m], that 'to excommunicate a single person cannot make a schism, unless the multitude favour him;' intimating that a multitude is a dangerous thing to be involved in censures. 'The king nor the people are not to be excommunicated,' is an old rule. For if the whole multitude be excommunicate, with whom shall we communicate? If great parts of them be, they plainly make a schism, if they unwillingly suffer the censure; and therefore that one church should do this to another is very hardly possible to be done with wisdom, or charity, or necessity. For when S. Paul bade his flock to abstain from the society of fornicators, he told them he meant it only in the small numbers of the brethren, where, it may

[l] [Compare p. 274 above.]
[m] Contr. epist. Parmen., l. iii. c. 2. [tom. ix. col. 64 C.]

be, one or two in a diocese or city of that religion might be criminal; for he would not have them to go out of the world to keep that canon, and therefore meant not to involve the multitude of fornicators which were in the world. But now he that excommunicates a church, either does nothing at all, or he obliges every one in that church to separate from that multitude; and then if he must not go out of the world, he must go out of that country, which no spiritual power can command, and which the apostle never did intend, as appears in his caution and the whole economy and reason of that canon.

§ 8. But I am to add this also, that there is scarce any case practicable, in which, if it be indifferently permitted to the people to separate from the communion of their superior, it will not very quickly proceed to mischief and become intolerable; a remedy worse than the disease. When Nestorius[n] had preached these words[o], 'whoever shall say that the virgin Mary is the mother of God, let him be accursed,' the people had reason to be offended; but they did ill when they made a tumult: for when the people are stirred, zeal is the worst thing about them. Thus when the two deacons of pope Vigilius were displeased with their bishop in the cause of the 'three articles,' which the pope had condemned in the fifth general council, they very pertly withdrew themselves from his communion; and the effect of it was, that almost all the Roman church and divers other western churches did so: and so did the people of Istria[p] to their bishops in the same cause, and so did many more: and the evil grew so great, when every one would as he pleased withdraw himself from the communion of their bishop or priest, that it was under great penalty forbidden by the eighth synod, the tenth chapter.

§ 9. But this may be done in these following cases.

1) When the superior hath manifestly erred in faith, that is, in an article of his creed, or a plain proposition of scripture, or in an article established or declared by that authority which hath bound him and them equally, and in which they conceive no error. Thus the priests and people of Constantinople withdrew themselves from the communion of Eunomius[q], because he erred in an article determined by the whole church, and established by the laws of emperors, and as they believed clearly declared in scripture. But when Plato the monk withdrew himself from the communion of Tarasius the patriarch of Constantinople[r], because he refused to excommunicate

[n] [Cyril (l. c.) attributes the expression to Dorotheus, Socrates (H. E. vii. 32.) to Anastasius. According to Theophanes (chron. p. 76 A. fol. Par. 1655.) these words were contained in a sermon written by Nestorius, and read in the church at his direction by his secretary (Syncellus).—Compare the remarks of Neander (Kirchengesch, &c.) on the subject of this controversy.]

[o] S. Cyril. ep. xviii. ad Cœlestinum. [tom. v. p. 37 D.]

[p] Paulus diacon. de gest. Longob., lib. iii. cap. 12. [p. 387. ed. fol. Bas. 1532.]

[q] Theodoret., lib. iv. c. 14. [al. 15.]

[r] Baron. A.D. DCCXCV. [§ 42. tom. ix. p. 459.]

the emperor, it was an insolence fit to be chastised by the rod of ecclesiastical discipline.

§ 10. 2) Priests may withdraw themselves from the communion of their bishop, and the people from the communion of their priests, in things declared by laws to be against the peace of God, and the church, when the fact is evident and notorious.' But this is not to be done by single persons, but by the whole community: and the reason is, because the fact is not evident, or not scandalous to that degree as to deserve this canonical punishment, unless the congregation be offended, or the congregation note it; for though the bishop be more public than any single person, yet he is not more public or of more concernment than all his diocese. These particulars, that is, this leave and this caution, I have from Origen[s], explicating in what sense we are bound to cut off our right hand. *Ego qui videor tibi manus esse dextra, et presbyter nominor, et verbum Dei videor prædicare, si aliquid contra ecclesiasticam disciplinam et evangelii regulam gessero, ita ut scandalum tibi, ecclesia[t], faciam, in uno consensu ecclesia conspirans excidat me dextram suam, et projiciat a se.* 'if I that am thy right hand, and preach the word of God, do any thing against the discipline of God's church, and the rule of the gospel, so that I give offence to the whole church, let the whole church consenting together cut me off and throw me away.'

§ 11. 3) But all this is to be understood to be done by permission or authority of the prince, in case he shall interpose, because where public divisions and breach of peace are in agitation, the commonwealth is more concerned oftentimes than religion; and therefore where the laws of God do not intervene, the laws of the king must, or the whole separation is a sin. And therefore we find that when Gregory the first, bishop of Rome, had thus refused to communicate with John bishop of Constantinople, he was commanded by the emperor Mauritius to communicate with him. And it is very fit that such heats and private judgments, and zealous but unnecessary proceedings, should be kept from inconveniences by such public persons who are to take care of peace and of the public. For if such separations be not necessary, they are not lawful; and if they be not the only way to avoid a sin, they are a ready way to commit one. For because every man's cause is right in his own eyes, when such heats as these happen between confident persons, every man is judge in his own cause; and what is like to be the event of such things, all the world can easily imagine.

§ 12. But now concerning those other two proper kinds of excommunication, the greater and the lesser, they have the same consideration, if we mean them according as the church now uses them; that is, if they be imposed upon men against their will. For as for the lesser excommunication, so as it was used in the primitive church,

[s] In Josu. hom. vii. [tom. ii. p. 414 A.] [t] ['tibi et ecclesiæ,' MSS.]

and so as the church of England wishes it were now restored, when penitents came and submitted themselves to the discipline of the church, and had exercises, stations and penitential times allotted to them, and were afterwards with joy and comfort restored to the peace of the church, it is a ministry done by consent, and without any evil, and no man hath to do with it. But if the consent of the criminal be not in it, the bishop cannot compel him; but the bishop and the king can. And therefore we find that the emperors made laws in this very particular; and Justinian in his 123rd novel[u] commanded that no ecclesiastic person should excommunicate any one, unless the cause were first approved. Which law was commended by the council of Paris under Ludovicus; and by John the eighth, who upon the authority of that law inhibited some bishops from excommunicating one Bichertinus.

§ 13. By this I do not mean to say that the ecclesiastical judge hath not power to deny a criminal the peace and communion of the church, by declaring him to be unworthy to communicate; but because as the laws and as the customs of the world are now, there is disgrace, and there is temporal evil consequent to such ecclesiastical separations, the bishop can be restrained in the actual exercise of his spiritual authority, if there be any thing in it of temporal concernment.

§ 14. And therefore if the bishop did excommunicate any of the prince's servants, or any whom the prince had a mind to communicate and converse withal, the censure was to be reversed; *ut quod jam principalis pietas habet acceptum nec a sacerdotibus Dei habeatur extraneum*, as the fathers of the twelfth council of Toledo[x] did decree; 'that what the piety of the prince does receive, the bishops may not reject.' For to avoid the company of any person is an effect of excommunication indeed, but not inseparable: and because to converse with any of his subjects is a right of kings that none of his bishops can devest him of, the bishop can excommunicate no man without the king's leave; that is, he cannot separate him from the society of the faithful. And therefore Ivo bishop of Chartres[y] justified himself upon this account for conversing with one Gervasius that was excommunicate. *Pro regia enim honorificentia hoc feci, fretus auctoritate legis, si quos culpatorum, &c.* 'I did it,' saith he, 'relying upon the authority of the law, and for the honourable regard of the king.' And this he advises to others also, in his hundred and seventy-first epistle[z]: and S. Anselm, though he was extremely troubled with the pope's peevish injunctions against the king of England's right in the matter of investitures, yet in his epistle to prior Ernulph he gives leave that though he durst not by reason of the pope's personal command to the contrary, yet they might communicate with those whom

[u] [Authent. coll. ix. tit. 6. cap. 11.]
[x] Cap. iii. [tom. iii. col. 1720.]
[y] Epist. [lxii. p. 117.]
[z] [p. 293.]

the pope had excommunicated for receiving investitures from the king. Now although this appendage of excommunication, that is, abstention from the civil society of the criminal, is wholly subject to the laws and power of princes; yet the spiritual part of the excommunication, that is, a separation from the communion by declaring such a person to be unworthy, and using to him the word of his proper ministry, is so wholly under the power of the ecclesiastic order, that when the king commands that the company of the excommunicate should not be avoided, yet the man is not absolved from his sentence in the court of conscience, but is bound to satisfy the church if she have proceeded legally and canonically. The king can take off the temporal penalty, but not the spiritual obligation; that is, the man is not to demand the sacrament till he be absolved. If the king commands it, the bishop must not deny his external ministry: but the man sins that demands it, because he communicates unworthily, that is, by a just power, but not by a just disposition. He must repent of his crime before he can come innocently.

§ 15. For it is to be observed that in this affair one part concerns the criminal, and another concerns the people. The criminal is bound to abstain from the communion: that duty is incumbent upon him, because he is judged to be unworthy of it by that authority which he is bound to trust, in case there be no apparent error. But to be thrust from civil society is not directly any duty of his, but is incumbent on the people. Now though the bishop can in some cases advise this, yet in a christian commonwealth he cannot without leave command it: and therefore the censure or judgment of the church is to have effort upon the conscience of the guilty, and this invades no man's right; it is for his good that is concerned, and is wholly a spiritual power, and intrenches not upon the civil right of any man, much less upon the public and supreme power. In the lesser excommunication, if the subjects be not voluntary, or be not subjected by him that hath the power over them, that is, the king, they cannot be compelled by the bishop to any external act or abstention. But if they do themselves submit, or are submitted by their supreme, they are bound not only to obey the censure of the church, but themselves to go away from company that know not of this calamity: as I have already instanced[a].

§ 16. The sentence of the greater excommunication, though to be estimated in many particulars by the former measures, yet hath in it something of particular consideration. This is the great *anathema maranatha*, the excision of a man from the body of the church; without which body, whosoever is in that manner justly separate, there is no salvation to him: and this the church called by the name of *anathema*. Not that whenever the word *anathema* is used, the greater excommunication is signified; for it is very often used as an

[a] Chap. ii. rule 2. [§ 15. p. 77 above.]

earnest expression of the dislike of a thing: so the clergy of Edessa, when they purged their bishop Ibas of the crimes objected to him in the council of Chalcedon[b], they solemnly protested they knew no evil of him, *Anathematizantes nosmet ipsos, et terribili gehennæ nosmet ipsos obnoxios facientes, si novimus,* 'anathematizing themselves, and exposing themselves to the guilt of eternal damnation if they knew any such thing.' Such *anathemata* are denounced against sacrilegious persons in the donatives made to the church: and thus divers councils do pronounce *anathema* to false propositions, and Justinian in the code[c] uses the same execration against certain heresies. Now to such an *anathema* as this all persons can be subject, kings and princes, bishops and priests, multitudes and single persons. There is nothing considerable in this, but that the cause be great and worthy: for whoever he be that works abomination, let him be who he will, yet he is abominable, and shall be separated from the communion of saints in the day of the New Jerusalem.

§ 17. But the enquiry that remains is concerning the great *anathema,* or excision of obstinate criminals from the body of the church, which is the only excommunication that Christ gave in commission and warranty. For so the fathers expound those words of Christ[d], "But if he will not hear the church, let him be unto thee as an heathen and a publican;" that is, not to be esteemed for a brother or a Christian, saith S. Gregory[e]: *quia neque influxum habet a capite, neque participat de spiritu Christi,* saith S. Austin[f], 'he neither hath any influence from the head, nor partakes of the spirit of Christ.' This man the church does not pray for, does not pray with, does not communicate, does not hope well of; he receives no assistance and gifts of grace from the holy Spirit of God: and S. Jude[g] says, his works are "gone aforehand unto judgment." *Videlicet peccator gravis et scandalosus, notorius, aut accusatus et convictus,* 'he who is a grievous and a scandalous sinner, notorious or convict,' being reproved by the bishop in the public assemblies of the church, if he will not be humbled, but remains incorrigible and perseveres in his scandalous sins, *tum anathemate feriendus est, et a corpore ecclesiæ separandus,* 'then he is to be smitten with the *anathema,* and to be separated from the body of the church,' so S. Gregory[h]. To this there is nothing else consequent, but that the man, unless he timely and mightily repent, will be damned; and in the mean time that every man account him to be no brother, and have no entercourse with him, but as with a Turk or a Jew.

§ 18. Now concerning this, he that is in ecclesiastical authority, and hath received the holy order, hath this power; and he that hath

[b] Act. x. [tom. ii. col. 534 A.]
[c] Cod. de summa trinit., l. 7. [lib. i. tit. 1.]
[d] [Matt. xviii. 17.]
[e] In Psal. v. pœnit., init. [vid. tom. iii. part. 2. col. 511.]
[f] Tract. 27. in Johan. [vid. § 6. tom. iii. part. 2. col. 504.]
[g] [The words are from 1 Tim. v. 24.]
[h] [Ubi supra.]

a charge can minister this power: and so long as nothing temporal and secular is mingled with it, the bishop can do it wholly by his spiritual authority: and in this he does nothing depend on the supreme civil power, save that he be permitted to exercise his spiritual office. For though it be true that any bishop can by the civil power be hindered from ministering in public assemblies, for he may be banished or deposed, and another put in his chair, or all his offices may be suspended *quoad exercitium actus* (as the schools speak) so that he may not exercise his power; yet a bishop that hath a flock, that is permitted actually to do what Christ hath impowered him to do, can by his own sole authority inflict this sentence upon scandalous and refractary, disobedient and impenitent, rebellious and persevering sinners: and if the church could not do this, she had not power sufficient to the ends of her designation; she were no body politic, but without government and power; and all that discourse of our blessed Saviour in the eighteenth of S. Matthew[1], and his commands of delating refractary criminals to the church, and the promise to verify in heaven what they shall reject on earth, were words signifying nothing and of no effect. But because no wise man will imagine that it must follow that the ecclesiastic state, they to whom Christ promised to give the keys of the kingdom of heaven, they who are stewards of the household and dispensers of the mysteries of the gospel, have this power subjected in themselves independently from the civil power, as they have a power to baptize, and to consecrate, and to ordain ministers of religion; and they can no more be hindered from one than from the other; they may *de facto*, and they may by a competent power, but if they be, it is persecution. That this bishop or that, that Cyprian or Silvester, that Valerius or Augustine should be the man, is under the power of the civil magistrate; but the man that is permitted to use the powers Christ put into his hand, can upon persons so disposed pronounce God's *anathema* and the church's.

§ 19. Now the reason of the difference why the bishop cannot do this in the lesser excommunication, and yet can in the greater, is this, because the greater is of divine institution, and the other is of human, never used but by consent, or by a superinduced civil authority, and therefore must still depend upon the causes of its being. Add to this, there is a precept annexed to this power: there is a double duty; the bishop is to separate the vile from the precious, the leprous from the sound, and the people are to take heed of such impure mixtures. But in the lesser excommunications there may possibly be something of prudence; yet as there is no proper authority in the ecclesiastical superior but what is given him by consent, so there is no obligation or duty in the subjects: it is well when they submit to this discipline, and go to be cured

[1] [Matt. xviii. 16—18.]

by the public hands even for every malady; but they are not bound to this: but if they be delated or be notorious and great criminals, here the church is warranted by God to proceed to discipline, and to separation and excision of the refractary. This only hath effort upon the soul; but the lesser excommunication is a discipline of ecclesiastical institution; and so is that denying of communion to equals or superiors, and so is irregularity, and so is refusing to mention a name in our collects and public or private prayers, and so is suspension and interdict, degradation and deposition: they are all of ecclesiastical positive constitution, no part of the power of the keys, nothing of divine authority; but are introduced by the consent of churches, and verified by custom, consent, and the laws of princes, and so come accidentally to pass an obligation, but effect nothing directly upon the soul. That is a peculiarity of the greater excommunication: and that which stands next to it is the lesser excommunication: which although it be *humanum inventum*, and of positive institution, yet because it is a part of the greater, and proceeds in the same way, upon lesser causes, but to designs of charity and edification, it is an use of the spiritual sword, it is the lancing of a sore, but not the cutting off a dead part; but it may be admitted to be a consequent of the power of binding or loosing, and so I have already called it[1]. For it is a part of that intermedial monition which Christ hath in general commissionated His ministers and guides of the church to make. If an offender will not mend by private, and by a more public admonition, 'tell it to the church;' then the church is to do something when the stubborn criminal is delated to her. The church must try if he will repent upon her monition: for then the ecclesiastical rulers are to exhort him into repentance, to reprove, to correct, to do what spiritual fathers ought to do: the particulars of which because they are not specified by our blessed Lord, they are left to the prudence of the ecclesiastical governors; so that the general discipline is warranted, but the particular is left to their choice who by the analogies of the consequent power of the keys can proceed by lesser and an intermedial process. But the power of the keys is given in order to something that is to be done afterwards. For that is only the warranted and express authority, and that which imitates coercitive jurisdiction the nearest, that those be cut off from the church who by their voluntary submission will not amend and submit to the paternal rod and gentle correption.

[1] Numb. 1. of this rule. [p. 308.]

RULE IX.

EXCOMMUNICATION INFLICTED UPON A LIGHT CAUSE BINDS EXTERNALLY BUT NOT INTERNALLY; BUT IF IT BE INFLICTED UPON AN UNJUST CAUSE IT BINDS NOT AT ALL.

§ 1. THIS latter part of the rule is evident and consented to by all. For in this the civil and ecclesiastical power differ. The civil power, if it condemns the innocent, hath effect upon him, and does afflict or put him to death: but the ecclesiastical power does nothing, unless the man hath done the mischief to himself. For God having undertaken to verify what the church does, it must be supposed that the church must do right, else God will not verify it; and then it signifies nothing, but that the governors ecclesiastical have sinned. *Ejiciunt oves qui contra justitiam de ecclesia separant,* saith S. Hierome[k], 'they that against right cast a man from the church,' they are ill shepherds, and 'drive the sheep from their folds' where Christ loves to see them: and therefore Alexander the second 24. *q.* 1. *c.* '*Audivimus*[l]' says that 'unjust excommunications are not to be slighted and neglected;' and Gerson[m] says, 'It is honourable to the church that such a prelate should be resisted to his face.' But this in case of injustice and manifest abuse: such are those excommunications in the *Bulla Cœnæ Domini,* in which those persons who do their duty, who do not consent to the errors and abuses of the church of Rome, who read good books that discover their horrible impieties, are excommunicated; it is *brutum fulmen;* it is harsh as the noise of peacocks, but does no more harm to them that are intended.

§ 2. But now in the other part of the rule there is difficulty, and it is occasioned by a discourse of S. Leo in his ninety-third epistle[n]; 'Let not the communion be easily or lightly denied to any Christian, nor at the pleasure of every angry priest; because the mind of the avenger ought unwillingly and with a kind of grief to proceed to the infliction of vengeance even upon a great guilt. For we have known some for slight actions and words excluded from the grace of the communion, and a soul for which the blood of Christ was shed, by the infliction of this so severe a punishment wounded, and as it were disarmed and spoiled of all defence, exposed to the assaults of the devil, that it might be easily taken.' By which words S. Leo seems to say that he who for a trifling cause is excommunicate, does nevertheless feel all the evils of that greatest censure. He says well and true: but he does not say that he is separate from God, that he shall perish everlastingly, that God will in heaven verify what is done upon earth; but he reproving this impiety, that the greater excommunica-

[k] In Jerem. xxiii. [tom. iii. col. 634.]
[l] [Gratian. decret., part. 2. col. 1507.]
[m] c. 4. De vita spirit. anim. [lect. iv. coroll. 6. tom. iii. col. 204 A.]
[n] [Al. epist. x. cap. 8. tom. i. col. 640. ed. fol. Ven. 1753.]

tion should be inflicted for trifles, tells the real evils which do follow; for the excommunicate being separate from the communion, denied the prayers of the church, banished from the communion of saints, is devested of all these excellent helps and spiritual defensatives against the power of the devil. Now this is very true, though the cause were wholly unjust; and much more if the cause be something, though not sufficient. *De facto* the man is deprived of the helps of the church, and the advantage of holy ordinances: and though God will, if the man be a good man and devout, hear his private prayers, and supply him with secret strengths, and in his behalf rebuke the devil; yet it was a worthy cause of complaint in S. Leo, to consider that this evil was done for little things, and that for so small occasions God should be put to His extraordinary way, and the man be deprived of the blessings of the ordinary.

§ 3. But whether this sentence so slightly inflicted do really bind the soul before God, is a question which Origen[m] enquired into, but durst not affirm it; but concludes that it obliges in the church and before men: for whether it obliges before God or no, *Deus scit; nos autem pronunciare non possumus, secundum quod scriptum est, Nolite judicare*; 'God only knows, but we must not judge.' But yet if it be his unhappy lot to fall into such a calamity, *factum valet, fieri non debuit;* the ecclesiastical ruler did very ill in it, yet the man is bound to the church. *Qui ergo in peccato levi correptus . . non se emendat, nos quidem sic eum debemus habere quasi publicanum et ethnicum, abstinentes ab eo, ut confundatur,* 'he therefore that is taken and excommunicate for a small fault, and will not amend, we must esteem him as a heathen and a publican, that he may be ashamed.' Indeed the church hath put a heavy and an unequal load upon such a person, and hath erred greatly; for no man is to be separate from the church of God, but he that separated himself from God, and hath left his duty: but therefore if the church do excommunicate him, whose action or words, though it be faulty, yet it can consist with the state of a good man, and does not destroy the love of God, the censure was too heavy as to the external, and false as to the internal; for the man is not fallen from God, but does communicate with the head, and continues to receive of the spirit of Christ.

§ 4. But yet even such a man is bound externally: for this is the meaning of that famous saying of S. Gregory[n], *Pastoris sententia etiam injusta timenda est,* 'the sentence of a bishop though it be unjust is to be feared:' that is, though it be in a cause that is not great and competent enough, but if it be in a light matter, yet it is to be feared; not only because the man is deprived of the prayers and communions of the church (which though it happen to an innocent person is a great evil, and therefore is to be feared, though it be

[m] Tract. vi. in Matth. [lege tract. xiv. § 30. tom. iii. p. 612 A.]

[n] In Evangel., homil. xxvi. [tom. i. col. 1556 C.]

in all senses unjust) but also because it binds the man that is deprehended even in a light fault, to submit to the judgment and satisfactions of the church. The burden is very great, and ought not to have been imposed; but when it is it must be suffered, because no repentance can be too great for any sin: and although the bishop made a false judgment concerning the man, and he does not stand so before God as before the church, that is, for his first little offence; yet being censured and unfortunate, if he refuses to obey that which is indeed too much to be imposed, but will do him no hurt, it is not his first little sin, but his great contempt, that is to be accounted for before God with the greatest severity.

§ 5. But then if it be enquired in what cases only excommunication may be lawfully inflicted; the answer is easy: but I choose to give it in the words of the fathers, because there is in this case reason and authority too.

1) *Ubi peccatum non est evidens, ejicere de ecclesia neminem possumus, ne forte eradicantes zizania eradicemus simul cum ipsis etiam triticum,* so Origen[o]: 'unless the fact be evident no man must be excommunicate, for else we may peradventure root up the wheat with the tares.' But that's not enough.

§ 6. 2) No man must be excommunicate but he that is *peccator gravis et scandalosus,* 'a grievous and a scandalous sinner; so S. Gregory[p]; and like to this is that of Aristotle, Διαλυτέον οὐ πᾶσιν, ἀλλὰ τοῖς ἀνιάτοις διὰ τὴν μοχθηρίαν, 'we must not separate from every sinner, but from the intolerable and malicious.' For what should a man proceed to violent remedies, when a gentle application will make the cure? and for a trifling cause to cut a man off from the communion of the church is to do as the man in the fable, that espying a fly upon his neighbour's forehead, went to put it off with a hatchet, and struck out his brains. And therefore the fathers in the council of Worms, can. 2[q], decreed *Ut nullus sacerdotum quenquam rectæ fidei hominem pro parvis et levibus causis a communione suspendat: præter eas culpas pro quibus antiqui patres arceri jusserunt aliquid committentes.* In the infliction of censures the church should follow the practice of the primitive fathers, excommunicating no true believer but for some very grievous fault.

§ 7. 3) Neither is this sufficient of itself: a scandalous sin alone is not enough, for excommunication is the last remedy. *Omnia prius tentanda quam bello experiendum;* when nothing else will do it, then this is to be used: for if the man will be amended by private correction, or by public admonition, if he be ready to hear his brother, or to obey the church, why should he be esteemed as a heathen man and a publican? *Si non audierit ecclesiam* is the condition of using the keys; 'if he will not hear the church:' so it is in the charter, if being publicly convict and reproved by the bishop, he will not be

[o] In Josue, homil. xxi. [tom. ii. p. 447 B.]

[p] In psal. v. pœnit. [vid. p. 316. supra.]

[q] [lege can. 13. tom. v. col. 739 fin.]

humbled, but remains incorrigible and perseveres in his sin, then he is to be excommunicated and smitten with the *anathema*. Like to this is that of Chrysippus[q], *προσήκει τὰ μὲν ὅλως παραπέμπεσθαι, τὰ δὲ μικρᾶς ἐπιστροφῆς τυγχάνειν· τὰ δὲ ἐπὶ μεῖζον, τὰ δὲ ὅλως διαλύσεως ἀξιοῦσθαι.* 'Some things are to be turned from, with our head a little aside; and from some things we must run away: some things are more earnestly to be avoided; and from others we must be parted for ever:' so S. Gregory in the place above cited. *Spirituali gladio superbi et contumaces necantur dum de ecclesia ejiciuntur*, so S. Cyprian[r], 'the proud and the contumacious are slain by the spiritual sword when they are thrown out of the church.' *Inobediens truncatur* is S. Hierome's[s] expression, 'he that is rebellious or disobedient to the discipline and correction of the church, he is to be cut off.'

§ 8. Now all these must be joined together. If the fact be not notorious or proved, a man must not be so severely smitten we know not why. And if the fact be evident, yet unless it be great, it deserves not the biggest punishment. For the judge is cruel, and not just, that puts a man to death with torments for spitting in his parlour: and the judgment of the church being nothing else but an effective and terrible declaration of the judgment of God, must not be exterminating and final for things of little concernment, but according to the wisdom which we see, and the mercy which we hope for. And after all, if it be evident and great, yet the last remedy must not be used at first; and a man will not have his arm cut off for a felon[t] upon his finger, or the gout in his wrist, or an ulcer that can by any other means be cured. But when in a great pestilence and danger of infection there is no other remedy, when the fire rages desperately, and can by no other means be stopped; then pull the house down, and separate the infected from the city; he is fit for nothing but charnel-houses, and the society of the dead.

§ 9. 4) This caution Gerson[u] instances in pecuniary matters. For (saith he) not every contumacy against the orders of courts ecclesiastical is to be punished with this death. If it be in matters of faith or manners, then the case is competent: but when it is a question of money and fees, besides that the case is full of envy and reproach, apt for scandal and to bring contempt upon the church, the church hath no direct power in it; and if it have by the aid of the civil power, then for that a civil coercion must be used. It is certainly unlawful to excommunicate any man for not paying of the fees of courts; for a contumacy there is an offence against the civil power, and he hath a sword of his own to avenge that. But excommunication is a sword to avenge the contumacy of them who stubbornly

[q] [De amicit., lib. ii. apud Plutarch. de Stoic. repugn., tom. x. p. 299.]
[r] Lib. i. ep. 11. [al. epist. iv. p. 9.]
[s] Epist. i. [al. v. tom. iv. part. 2. col. 10.]
[t] ['A whitlow,'—Johnson.]
[u] De vita spirit. anim., lect. iv. corol. 7. [tom. iii. col. 205.]

offend against the discipline of the church in that wherein Christ hath given her authority, and that is in the matters of salvation and damnation immediate, in such things where there is no secular interest, where there can be no dispute, where the offender does not sin by consequence and interpretation, but directly and without excuse. But let it be considered how great a reproach it is to ecclesiastical discipline if it be made to minister to the covetousness or to the needs of proctors and advocates; and if the church shall punish more cruelly than civil courts for equal offences: and because she hath but one thing to strike withal, if she upon all occasion smites with her sword, it will either kill too many, or hurt and affright none at all.

§ 10. 5) Spiritual censures must not be inflicted for temporal causes, in questions of right and secular concernment, for which the civil sword is sharp enough and proper. In the church of Rome it hath been very usual to use excommunications for the discovery of thefts, or the manifestation of secret actions. Divers examples of which are in the decretals and later canons of the church; but not till the church had been extremely corrupted both in doctrine and manners. But this advice is the same almost with the former, and relies upon the same reason. But who please to see more of it may see it in Gerson, *de vita spirit. anim., lect.* iv. *corol.* 7[v], *et serm. in concil. Rhemens., partit.* ii. *consid.* 2. *provis.* 2[x].

§ 11. As a corollary to these advices, I am to add one thing that is of great use and consideration, and that is, that when a law is made that whoever shall commit such a fact shall be *ipso facto* excommunicate, it must never be understood of the greater and proper excommunication; for if it be, it is unlawful and it is ridiculous. For the abscission from the church is not to be used but after all other remedies: when the crime is delated or notorious, and the person called, when he hath been admonished and reproved, and called to repentance, if after all he refuses and rebels, then he is to be cut off, else not: and therefore no man is *ipso facto* cut off. The offence alone deserves it just as it deserves damnation: but because God is pleased graciously to call a sinner to repentance, and cuts him not off till he hath refused His gentleness and forbearance, the church must do so too, following the economy of God; for if the church kills on earth, and God saves in heaven, it is clear she hath not rightly used her power, and therefore must not kill at the first dash.

§ 12. If therefore it be enquired whether all such sentences in law which declare a man to be in certain cases *ipso facto* excommunicate be unlawful, the archbishop of Spalato[y], who is fierce against them, answers affirmatively and confidently, and disputes well against them; but his reasons are overvalued by him and are not demonstrative; for they all rely upon this proposition, that no man be tied to be execu-

[v] [tom. iii. col. 205.]
[x] [tom. ii. col. 627.]
[y] Lib. v. de rep. eccles., cap. 9. n. 23, 4. [tom. ii. pp. 410, 1.]

tioner of any sentence against himself, which I have proved to be false[z]. What then do such sentences effect more than others which are comminatory, and threaten the sentence only to be inflicted by the judge if the crime be delated and proved? Gerson[a] saith he learned thus to answer from his master, that the judge in such cases when the fact is proved or confessed, may pass to sentence without any further judicial process; which in other cases he cannot do. But Gerson and his master would fain have been at a new thing, but they could not hit it right. For whether any such thing was effected or no, or whether any more was intended, is not a matter of conscience; for this whole proceeding is not the ministry of the keys, but wholly a human invention, done with great reason, and is of prudent conduct, and warranted by precedents in scripture: and since in those places where many such laws are made and used it is certain that the lawgivers intend more, and more is practised, it is not true that Gerson's master told him, that these laws produced nothing but a power for the judge to proceed summarily. And therefore he neither answered right in the point of law, nor in the case of conscience; and yet he said well, that such sentences of excommunication do not oblige others to abstain from the society of the excommunicate. It is true, but not for his, or for the reasons of the learned archbishop of Spalato; but for this reason, because these sentences do not intend to involve the offender in the greater excommunication, which is not to be inflicted but upon him that hath sinned grievously, and after admonition refuses to amend. For if the greater excommunication were intended, the laws were unlawful and the sentence unjust. For a crime in manners is like an error in faith; this without pertinacy is not heresy, and that without contumacy does not deserve excommunication. But what then?

§ 13. Therefore all those laws which inflict the sentence of excommunication *ipso facto* are to be understood of the lesser excommunication; and they mean thus much only, that the church declares that all such criminals are obliged to confess their sin, to abstain from the communion till they have truly repented, to submit themselves to the judgment of their spiritual guide, to receive discipline at his hand, and manners of emendation; and in this sense the laws are pious and reasonable, useful and of great effect: but how much the conscience of the criminal is by them obliged is a secret of which we know nothing; but this we know, that where such laws are used and understood, without such submission and amends, a man that desires to be good can have no peace of conscience.

§ 14. The like is to be said of those ancient canons of councils which for light causes impose and decree the sentence of excommunication. Thus the fourth council of Carthage[b] decrees him to be excommunicate *qui sacerdote verbum faciente in ecclesiâ egressus de*

[z] Chap. ii. rule 2. [p. 76.] [a] [Ubi supr. coroll. 14. col. 212 D.]
[b] Cap. xxiv. [tom. i. col. 980.]

auditorio fuerit, 'who shall go out of the church before the sermon be ended.' Very many of the same nature might be produced, but they all mean the same thing; that he that is delinquent in the instance when he is delated and convict shall be separate a while from the communion (for that was the discipline of those times), and thrust into the place of public penitents.

RULE X.

IT IS NOT LAWFUL TO COMMUNICATE WITH THOSE WHOM THE CHURCH HATH BY A JUST SENTENCE EXCOMMUNICATED.

§ 1. THAT is, all prohibited communion is unlawful: as if they be driven only from holy offices, then we must not admit such persons to our assemblies; if a civil entercourse be prohibited, that the criminal by shame might be brought to repentance, then that also must be denied him: for if he be bound by the censure of the church, then we also who are the relatives of that coercion are tied to do our duty to the church.

§ 2. To which purpose there is an excellent discourse in S. Cyprian[c], 'Wherefore,' saith he, 'although there be some of our colleagues that think it fit to neglect the divine discipline, and do rashly communicate with Basilides and Martialis, this thing ought not to disturb our faith; since the Holy Ghost in the psalms threatens such persons, saying, 'Thou hast hated discipline and cast My words behind thee: if thou sawest a thief thou didst go with him, and wert partaker with the adulterers.' He shews that they were consorts and partakers of other men's sins who were joined with the delinquents. But this thing also the apostle Paul[d] writes, saying, 'They are whisperers, backbiters, haters of God, . . who knowing the judgment of God, that they which commit such things are worthy of death, not only do the same, but have pleasure in them that do them. For,' saith he, 'they that do such things are worthy of death.' He manifests and proves that they are worthy of death and shall come to punishment, not only that do evil, but they who consent to them that do evil: who whilst by an unlawful communication they are mingled with evil sinners, and that will not repent, are polluted with the contact of the guilty, and because they are joined in crimes, they are not separated in punishment.

§ 3. The church having so good warrant from scripture proceeded to add ecclesiastical penalties to those that would not verify her sentences of just excommunications. For when some had got a trick to meet in houses and pray in conventicles, because they were

[c] Lib. i. ep. 4. [al. epist. lxvii. p. 175.]

[d] [Rom. i. 29—31.]

forbidden, or did voluntarily refuse to enter into churches, the council of Antioch[e] took notice of it, and forbad all such communions and assemblies and entercourses under the pain of excommunication. But this was decreed by the canons commonly called apostolical[f], *Si quis cum excommunicato saltem in domo simul oraverit, iste communione privetur*, 'he that prays with an excommunicate person so much as privately in a house, let him be deprived of the communion.' The same we find often in the ancient epistles of the popes; in the second[g] and in the fourth[h] council of Carthage, in the first council of Toledo[i], and in the synod at Auxerre[k] in France, in the first council of Bracara[l], in the council of Touraine[m], and the council of Verne[n].

§ 4. But this is to be understood with one caution, and to be reduced to practice by another. 1) Although the church excommunicates them that communicate with excommunicates, yet it is always to be understood that the partners are only smitten with a lesser excommunication, and obliged only externally, not internally. For there may be many cases very favourable in which an innocent person may innocently communicate with a heathen and a publican: and therefore in such cases in which a man does not take part against, or directly or by intention despise the church, or give countenance, strength, or increment, to the sin of the excommunicate, but with simplicity pursues other lawful purposes, and designs nothing of these, he is only tied to give satisfaction to the church; but is not guilty before God. For the places of scripture quoted by S. Cyprian above mentioned are only spoken of such persons who by their society approve, and in their hearts do consent to such crimes. But every man that goes along with them in their journey or in their merchandise, does not go along with them in their crime; and yet if they be forbidden to go along the road with them, and yet will do it, they may justly be presumed to go along in their consent and approbation: and therefore the church does well to forbid such to come to her communions till she be satisfied, that is, till the contrary does appear, or amends be made. But because in many cases the contrary can be made to appear, and in more cases the contrary is true, whether it can be made to appear or no, therefore in such cases it must be understood, that the companion of the excommunicate is only bound in the face of the church by such censures, and not in the court of heaven. And to this accords that of S. Leo[o], 'Certainly when any such cause does happen, that for the heinousness of some crime committed any one is justly deprived of the communion, he alone ought to be punished who is involved in the guilt;' *nec parti-*

[e] Cap. ii. [tom. i. col. 594.]
[f] Can. 10. aut 11. [aut 8. Coteler. patr. apost., tom. i. p. 443.]
[g] Cap. vii. [tom. i. col. 952.]
[h] Cap. lxxiii. [tom. i. col. 983.]
[i] Cap. xv. [tom. i. col. 991.]
[k] Cap. xxxix. [tom. iii. col. 446.]
[l] Cap. xxxiii. [al. 15. tom. iii. col. 351.]
[m] [Concil. Turon. ii.] capp. viii. et xx. [tom. iii. col. 359, 63.]
[n] Cap. ix. [tom. iii. col. 1996.]
[o] Epist. xciii. [al. epist. x. cap. 7. tom. i. col. 640. ed. fol. Ven. 1753.]

ceps debet esse supplicii qui consors non docetur fuisse commissi, 'neither is he to partake of the punishment that was not a consort of the fact.'

§ 5. 2) This rule is to be reduced to practice with this caution, that the church intends not to forbid any such entercourse or communion to which we stand pre-obliged by the law of nature, or any law of God, or of the civil supreme power, from which the church cannot absolve us. The sentence of excommunication does not enjoin a son not to help his aged father, nor the physician to give him physic in his sickness, nor the tenants to pay their rent, and talk with their landlord about his and their necessities, nor the feudatory to pay homage to his lord: to prohibit natural or civil duties the ecclesiastical power hath nothing to do. If the civil power hath forbidden a civil duty, he may, and then the subject is civilly bound in all things but where God hath commanded a duty. For even the king cannot command a wife not to pay her duty to her husband, nor a child to his mother. To these they are bound by God, though they die for it: and if the prince be angry, yet God is well pleased.

§ 6. For although the supreme power can forbid even an action that is of itself good and pious, and we are in the proper circumstances bound to obey him, and in this case also obedience is better than sacrifice: yet when the piety is necessary, and not under choice and counsel, but under a commandment, the king and the bishop singly or conjunctly have no power to forbid it.

> Οὐ γάρ τι νῦν γε κἀχθὲς ἀλλ' ἀεί ποτε
> ζῇ ταῦτα, κουδεὶς οἶδεν ἐξ ὅτου 'φάνη,

'for these are things that are not of to-day or yesterday, but of an eternal rectitude, and no man knows when they did begin.' For upon this account Antigona in Sophocles[p] defends the fact of burying her dead brother against the king's commandment. Even the gods themselves, that is, the great rulers of the world, are subject to these laws:—so Euripides[q],

> Ἀλλ' οἱ θεοὶ σθένουσι, χὠ κείνων κρατῶν
> νόμος· νόμῳ γὰρ τοὺς θεοὺς ἡγούμεθα,
> καὶ ζῶμεν ἄδικα καὶ δίκαι' ὡρισμένοι.

This law rules them that rule the world: and therefore the Greek tragedy[r] does rarely well call these laws ὑψίποδας, because all men and all things are under their feet. It is, as Pindar[s] calls it, ὁ νόμος βασιλεὺς θνατῶν τε καὶ ἀθανάτων, 'a law that is the king of all things mortal and immortal.' And therefore excommunications, though verified by the secular power, cannot forbid the necessary and dutiful entercourses of relations, or the issue of any duty commanded by a former obligation in the law of God.

[p] [Antig. 456.]
[q] In Hecuba. [799.]
[r] [Soph. Œd. Tyr. 866.]
[s] [Apud Plutarch. ad princ. inerud., tom. ix. p. 120.]

§ 7. But if the church will take her measures from the words of her commission, which as they are her only warrant, so they are the best rule, the external effect of excommunication is this only, that we esteem him that refuses to hear the church as a heathen and a publican. If we account and use him so, it is bad enough; but then we have no warrant to use him worse. And then as we eat and drink and talk and buy and sell with heathens without sin, why also not with excommunicates, this precept notwithstanding? I say, this precept notwithstanding, for it is more than an indulgence or a leave to use them so; it is a commandment: the rulers and stewards of God's household are tied to separate refractary criminals from the sound part; and the people are bound to be separate, for they also have a share in this binding and loosing by way of consent and compliance and verification, according to that of S. Austin[r], *Si fratrem habes pro ethnico et publicano, ligasti illum in terris; si correxeris fratrem, solvisti illum in terris.* The people are to bind and loose, that is, to esteem him that is bound as a heathen and a publican, and to assist in the correcting of him, by bringing him to repentance by the instrument of shame. But this being matter of office, and not merely of benefit, it is evident that it is a precept, and not a leave only; a commandment, and not an indulgence.

§ 8. But then if we enquire to how much and to what manner of usages it does oblige us, we shall be able to understand our duty best by considering that it is a proverbial expression, or a form of execration, to signify impious and profane persons, of the vilest reproach. Just as in the Old testament, of what nation soever he was, yet a stranger[s] from the covenant of God was called an Aramite or a Syrian; and when S. Paul said that S. Timothy's father was a Greek, the Syriac interpreter calls him an Aramite: so here a heathen and a publican signifies a wicked and a reprobate person; as we call cruel people Turks, and in the time of the holy war all very vile and intolerably vicious or hated persons were called Saracens. 'Harlots' and 'publicans' Christ[t] joins together; so 'publicans and sinners' the same with 'heathens and publicans.' Meaning that all contumacious sinners, that upon admonition and ecclesiastical correption refuse to repent, are to be accounted enemies and strangers to the rights and promises of the gospel, enemies to the religion, and separate from God, and given over to a reprobate sense.

§ 9. But it cannot be inferred from hence that the same usage which the Jews gave to heathens and publicans, we are tied to have towards excommunicates. That we must have no worse is certain, but not such, not so bad, is also very true; because our blessed Saviour did not even amongst them approve of those harsh and contemptuous usages; μὴ συγχρῆσθαι, κολλᾶσθαι, συνεσθίειν, προσέρχεσθαι, 'they would not eat, nor drink, nor trade, nor come to them.'

[r] De verbo Domini, homil. xvi. [cal. hom. lxxxii. cap. 4. tom. v. col. 442.]

[s] [Levit. xxv. 47.]

[t] [Matt. xxi. 31, 2.]

Non monstrare vias eadem nisi sacra colenti,
Quæsitum ad fontem solos deducere verpos[u].

They would not do common civilities or charities to an uncircumcised man, to a heathen. But when our blessed Saviour had used them better, and so taught others to converse with them, to do them good and to save their souls, it will be very reasonable to collect from hence, that Christ did not intend by this to enjoin us to such treatments of the excommunicates as the proud pharisees gave to publicans and heathens: but the manner of speech was in use among the Jews to signify impious persons and great sinners, and so excommunicates are to be accounted.

§ 10. That therefore which remains is, that the usage here intended is, that they should be separate from the communion of holy offices, from partaking in the mysteries of religion: for that was the known use of the words of 'binding' and 'loosing' among the Jews, which Christ used in giving the church a power of excommunication. To 'bind' signifies to forbid, and to 'loose' signifies to give admission and leave, according to that usual saying of the Jews, 'there was nothing bound by Ezekiel or by David but what was bound in the law,' that is, they forbad nothing else. So that the accounting these persons separate from God, and forbidding them to enter into the communions of the sons of God in the mysteries of their religion, is all that can by any probability be inferred from hence, excepting what is superadded from common reason and the laws of nature; that if beyond this there be danger of receiving hurt, the separation go further: and therefore the apostles gave caution to their converts that they should not salute or admit into their houses false apostles, because of the imminent danger; but beyond this I find no divine commandment.

§ 11. Whatsoever therefore besides these things is superadded by the laws of the king or the canons of the church, is to be obeyed upon those accounts, where no other duty is prejudiced; and therefore in this there is no other rule of conscience, but that we first attend to the laws of God concerning our other duties, and then to the laws of the king in this. But in the thing itself, excommunication cuts the refractary sinner from the communion or religious entercourse of the church; he is not to be reckoned as a brother or a relative in our religious friendship and union. The offices of humanity and civility are not to be denied to him; but there ought to be no dearness and proximity of friendship: we are not to take much care of reproving him; his ears are shut to truth, and he cannot hear good counsel; *hujus ergo desperanda salus* (as Cicero[v] said of the like persons), unless a new hope arise we may despair of his salvation.

§ 12. One thing more I add, that when the church inflicts censures upon those who communicate with the excommunicates, it is

[u] [Juv. sat., xiv. 103.] [v] [De amicit., cap. 24, al. 90.]

not upon a real belief that all such persons are guilty of the same crimes by secret approbation or consent, but because she cannot tell whether they be or no; for it is a just legal presumption, and hath some natural probability that it is so; and the church is but too justly offended and scandalized at such communications and entercourse. But then on all sides there is a difference to be made, and the church must not be so offended when he that communicates with the excommunicate apparently does not, or by that communion cannot be presumed to partake of the principal sin: and therefore besides the tyranny and usurpation and illegal proceedings of Hildebrand against the emperor Henry, excommunicating him upon pretence of simony in the matter of investitures, he did foolishly and unreasonably excommunicate all them that did partake or converse with him. For first, the church hath no power directly to make laws in the matter of secular conversation: and if it be said by consequence and legal presumption the church concludes such persons that communicate with the excommunicates to consent or partake of the crime; that is according as the matter is, and in this case is extremely unreasonable and foolish: for it cannot be imagined that all the subjects of the emperor should be partners of the bargains, or should know of them, or believe any such thing, or approve it, if they did know or believe it; and the communicating with their prince as subjects could not infer it, with any seeming probability, that they were all simoniacs.

§ 13. But then on the other side, the sons of the church must be with curiosity restrained in their communions with such excommunicates, whose conversation does with probability involve us in the guilt and participation of the principal crime: and this is especially to be observed in sins about government, and in matters of persuasion, that is, in matters of heresy and schism; for 'their word eateth like a canker[x],' that is, these crimes are infectious and scatter themselves into all that converse with them, or is very likely so to do; and therefore in these cases the subjects may be more restrained from entercourse with excommunicates, and it must be a greater necessity that must warrant it than may pass and be allowed in other cases.

§ 14. This is all I find necessary to be considered in the matter of ecclesiastical censures, in order to the regulating of conscience: which the casuists in the Roman church have handled in great volumes, and make it commonly the one half of all their enquiries and ministries of conscience. For all the questions and considerations concerning suspensions, irregularities, interdicts, depositions and degradations, absolutions of the dead and of the absent, the forms of absolution, reservation of cases, delegations and licenses, absolutions against our wills, and by others who bound us not, and upon false

[x] [2 Tim. ii. 17.]

suggestions, absolutions upon condition and reincidences, sentences uncertain and unknown, excommunications comminatory and *ipso facto*, papal and episcopal, common and special, principal and delegate, by regulars and seculars, the excommunication of angels and devils, of fowls and beasts, pagans and Jews, and thousands of questions, cases, accidents, incidents, limitations of times appendent to all these, which make the peace of conscience to be as impossible as the conduct of it, all these are cut off by the simplicity of truth, and the plainness of divine institutions, which are few, and easy, and useful, and reasonable; wise, but not perplexed; severe, but not insnaring. But those things which are introduced by human authority and rely upon secular interests, the artifices of covetous or ambitious men, and are maintained by force and false or uncertain principles, they are fit for the *forum contentiosum*, for 'courts of strife,' but not for the court of conscience, which is troubled by any thing that destroys peace as certainly as by that which destroys innocence.

SECT. III.—OF CANONS ECCLESIASTICAL.

That which I am next to enquire of is concerning the more particular persons or communities of men in whom the ecclesiastical power is subjected, and where we are to find the records of ecclesiastical laws, and from whom the obligations of conscience do proceed, and in what matters their authority is competent, and their canons obligatory. That is, to what and whose ecclesiastical canons the conscience is and how far it is bound.

RULE XI.

THE CANONS OF THE APOSTLES WHICH ARE OF ORDER AND EXTERNAL GOVERNMENT DO OBLIGE THE CONSCIENCE BY BEING ACCEPTED IN SEVERAL CHURCHES, NOT BY THEIR FIRST ESTABLISHMENT.

§ 1. THAT the canons which the apostles made did oblige the churches to whom they were fitted and directed is without all question, according to that of the apostle[y], "To this end also did I write, that I might know the proof of you, whether ye be obedient in all things." For whatsoever was their ordinary power, yet they had so much of extraordinary, had such special commissions and warranties from Christ, had such gifts and miracles of power, so much wisdom, so much charity, and so entire a government, and were the only foun-

[y] [2 Cor. ii. 9.]

tains from whence the rules of the church were to be derived, that their word ought to be a law to whom it was sent, and a precedent to them that should hear of it: it was like the pattern in the mount, to which all churches in equal circumstances and the same conjunction of affairs might conform their practices.

§ 2. Thus we find that the apostolical decree of abstaining from blood was observed by more churches than those of Syria and Cilicia to which the canon was directed; and the college of widows or deaconesses, though provided for the first ministry of the churches and relief of ancient widows, derived itself into the manners of the western churches, and lasted longer than there was need. There was no hurt in it; the reverence to the persons and dignity apostolical was foundation enough to bear a greater burden: but the retention of such canons and orders was just like the retention of the judicial laws in some commonwealths, which they did in regard to the divine wisdom; though they in so doing did piously indeed, but yet did not imitate that wisdom by which those laws were made.

§ 3. But because it is evident that the laws of order and government were fitted to times and places and present necessities, the same wisdom that so fitted the laws and things together, did also know that those rules were not good when the things were changed and grew unfit for that measure. The apostles in their first preachings and conversation in Jerusalem instituted a cœnobitic life, and had all things in common with the believers; indeed no man was tied to it: and of the same nature were their canons, counsels and advices, and propositions of what was best. But that advice related to the present necessities of believers: they were likely to suffer persecution, and the nation was in a little time to be destroyed, and therefore it was prudence to sell their lands, and charity to divide the use of it. But if any man shall say that this obliges all Christians, he is unreasonable; but if they do not, then it is certain that their laws oblige according to the subject matter and the changing reasons of things, and therefore not by their authority alone, but by their authority also who are judges of the reason of things, and can declare with obligation.

§ 4. But yet further, the orders which the apostles gave to their churches, though they be as good now as they were then, and have equal circumstances, yet unless it can appear that they by them intended to oblige all ages of the church, although they were not free then, yet they are free now. Now this is certain, that they gave no such laws but what they received in commandment from Christ; and whenever they said of any particular, "This say I, not the Lord," they gave but an advice, or made a temporary order; but when they said, "This we have received from the Lord," it is always a doctrine of faith, or a moral commandment. So that the rules of order being neither of these are but topical, and limited, and transient;—such which when they are chosen by the rulers of churches they become

canons and measures of practice, but else not. The apostle[z] made an order in the Corinthian church that men should not pray or prophesy having their heads covered: but yet in France the preachers are covered, and do not think they prevaricate an apostolical canon; because they supposed it reached no further but to that church, or at least was agreeable to the manners and customs of those places. S. Paul appointed that they should lay aside every first day of the week something for the poor: but he that shall choose to do this upon his weekly fasting-day, does as well; he does the same thing in another circumstance. S. Paul[a] gave in order to Timothy that a bishop should not be a novice; meaning in age, or in christianity, or both: and yet S. Timothy himself was but a novice, being chosen bishop at the age of twenty-five years, as the ecclesiastical histories report; and Theodosius chose Nectarius being but newly converted; and the people chose S. Ambrose to be bishop before he was baptized, and the election was confirmed by Valentinian. Fabianus, Cyprian, Nicolaus, Severus, Tarasius, were all novices or new Christians when they were chosen bishops, and yet the church made no scruple of that canon of the apostles, because to break it was more for the edification of the church. And I remember that Cassander[b], speaking of the intolerable evils that fell upon the church by the injunction of single life to priests and bishops, he says this law ought to have been relaxed, although it had been an apostolical canon. Thus also it happened in the canon concerning the college of widows[c], 'Let not a widow be chosen under threescore years;' and yet Justinian[d] suffered one of forty years old to be chosen, and had no scruple, and he had no reproof: but that was no great matter; for the whole institution itself is now laid aside, and other appointments are established. And which is most of all, that decretal of the apostles which was made in full council, the most œcumenical council that ever was in christendom, made at the request of the churches of the gentiles, and the enquiry of the Jews, forbidding to eat things strangled, is no where observed in the western churches of christendom; and S. Austin[e] affirmed that if any man in his time made a scruple of eating strangled birds, every man did laugh at him. But of this I have given a full account[f].

§ 5. Now if those canons apostolical which are recorded in scripture, and concerning which we are sure that they had apostolical authority, be without scruple laid aside in all christendom, some every where, some in some places, it is evident that it is the sense of the whole catholic church, that the canons of the apostles for order and external measures of government had a limited sphere of

[z] [1 Cor. xi. 4.]
[a] [1 Tim. iii. 6.]
[b] Consult., art. 23. [p. 989.]
[c] [1 Tim. v. 9.]
[d] Novel. 123. cap. 13. [Authent. coll. ix. tit. 6.]
[e] Lib. xxxii. contra Faustum Manich., c. 13. [tom. viii. col. 457 D.]
[f] Lib. ii. chap. 2. rule 2. [vol. ix. p. 355.]

activity, and bind not beyond their reason and convenience, that is, as every church shall find them fitted to their own measures; and therefore this is much more true in such things which are but pretendedly apostolical, whose name is borrowed, whose story is uncertain, whose matter is dubious, whose records are not authentic: and therefore whatever else can be pretended to be apostolical, and is of this contingent nature and variable matter, is evidently subject to the present authority of every church or christian kingdom which is supreme in its own dominion.

§ 6. But besides the reasonableness of the thing, we see it practised in all places without dispute or question, that those things which are called canons apostolical, and either were not so, or not certainly so, are yet laid aside by those churches who pretend to believe them to be so. The fifth canon of the apostles[g] in that collection which is called apostolical, appoints that the first-fruits shall be sent home to the houses of bishops and priests, and makes no question but they divide them amongst the deacons and clerks; but I think in the church of Rome they pay no first-fruits, and what they do pay, the bishops and priests keep unto themselves. But this is nothing. The sixth canon[h] commands that a priest or a deacon should not under pretence of religion put away his wife: now this is so far from being received in the church of Rome, that for this very canon's sake Baronius calls the collection apocryphal, and rejects them from being apostolical. The seventh canon forbids a bishop or presbyter to have any thing to do in secular affairs, under pain of deposition. This would destroy much of the grandeur of the church of Rome if it were received. And the tenth[i] destroys one of their great corruptions in discipline and doctrine, for it is a perfect deletery of their private mass; it excommunicates those of the people who come to churches and go away before they have received the communion, calling them disturbers of the church: now this at Rome would seem a strange thing. And yet all these are within that number of fifty which Baronius says were known to antiquity. But he that desires more instances in this affair, may consult the canons themselves, amongst which he will find very few observed at this day by any church in christendom. The church of Rome[k] pretends to believe that the wednesday and friday fast were ordained by the apostles; and yet the wednesday fast is not observed except by particular order and custom but in very few places. I shall give one instance more. The apostles[l] commanded the feast of Easter to be celebrated upon the sunday after the full moon which should happen after the vernal equinox: so the western churches said. The eastern pretended another canon from S. John, to cele-

[g] [al. can. 2. Coteler. p. 442.]
[h] [al. can. 3.]
[i] [al. can. 7.]
[k] Reginald. prax. fori pœnit., l. iv. c. 12. sect. 3. n. 133. [p. 150. fol. Med. 1619.]
[l] [Can. apost. 8. al. 5. Coteler. p. 443.]

brate it after the manner of the Jews[m]: and though they were confident and zealous for that observation upon the apostolical warrant, yet the western bishops at first, and afterwards the whole church, did force the easterlings to change that rule which they and their forefathers had avowed to all the world to have received from S. John; and it is observable that this was done upon the designs of peace and unity, not upon any pretence that S. John had never so given it in order to the Asian churches.

RULE XII.

ALL THOSE RITUALS WHICH WERE TAUGHT TO THE CHURCH BY THE APOSTLES CONCERNING MINISTRIES WHICH WERE OF DIVINE INSTITUTION, DO OBLIGE ALL CHRISTENDOM TO THEIR OBSERVATION

§ 1. I INSTANCE in the holy sacrament first of all: concerning which the apostles delivered to the churches the essential manner of celebration, that is, the way of doing it according to Christ's commandment: for the words themselves being large and indefinite were spoken indeed only to the apostles, but yet they were representatives of all the whole ecclesiastical order in some things, and of the whole christian church in other, and therefore what parts of duty and power and office did belong to each the apostles must teach the church, or she could have no way of knowing without particular revelation.

§ 2. Thus the apostles taught the bishops and priests to consecrate the symbols of bread and wine before they did communicate; not only because by Christ's example we were taught to give thanks before we eat, but because the apostles knew that the symbols were consecrated to a mystery. And this was done from the beginning, and in all churches and in all ages of the church; by which we can conclude firmly in this rule, that the apostles did give a canon or rule to the churches to be observed always, and that the church did never believe she had authority or reason to recede from it. For in those rites which are ministries of grace no man must interpose any thing that can alter any part of the institution, or make a change or variety in that which is of divine appointment. For the effect in these things depends wholly upon the will of God, and we have nothing to discourse or argue; for we know nothing but the institution, nothing of the reason of the thing: and therefore we must in

[m] [Polycrat. apud Euseb. H. E. v. 24. p. 243; Socrat. H. E. v. 22. p. 294; Sozom. H. E. vii. 19.]

these cases with simplicity and obedience apply ourselves to practise as we have received, for we have nothing else to guide us: memory and obedience, not discourse and argument, are here in season.

§ 3. And in this we have an evident and apparent practice of the church handed to us by all hands that touch these mysteries: as who please may see in Justin Martyr[o], Irenæus[p], Origen[q], S. Cyril of Jerusalem[r], and of Alexandria[s], S. Basil[t], S. Gregory Nyssen *de vita Moysi*[u], Optatus Milevitanus[x], S. Chrysostom[y], S. Ambrose[z], S. Hierome[a], S. Austin[b], Theodoret[c], Gregorius Emissenus[d], Gregory the Great[e], Damascene[f], Remigius[g], Paschasius[h] and divers others, and absolutely in all the liturgies that ever were used in the church; so that the derivation of this canon from the apostles is as evident as the obedience to it was universal.

§ 4. But where the apostles did not interpose, there the churches have their liberty; and in those things also which evidently were no part of the appointed liturgy or ministration, in those things though it be certain the apostles did give rules of order and decency, yet because order is as variable as the tactics of an army, and decency is a relative term, and hath a transient and changeable sense, in all these things there is no prescription to the church, though we did know what the churches apostolical did practise, for they did it with liberty: and therefore we are not bound; the churches are as free as ever; though the single persons in the churches can be bound, yet the churches always have liberty.

§ 5. And indeed that is the best sign that the apostles gave no perpetual order in any instance, and that it is no part of the institution or the ministry of grace, when the ancient churches, who were zealous for the honour apostolical, and accounted every thing excellent that derived from them, did differ in their practices. Thus the Greek and Latin churches did always differ in the sacramental bread, the Latins consecrating in unleavened bread, which the Greeks

[o] Apol. ii. ad Anton. [p. 83.]

[p] Lib. iv. adv. hær., cap. 34. [al. cap. 18. p. 253.]

[q] Lib. viii. contr. Celsum. [p. 758 sqq.]

[r] Mystag. catech. iii. [catech. xxi. p. 315 sqq.] et iv. [catech. xxii. p. 319 sqq.]

[s] In Johan., lib. x. cap. 12. [al. cap. 2. tom. iv. p. 860 sqq.]

[t] [Lib. de Spir. S., cap. 27. [tom. iii. p. 54 sqq.]

[u] [tom. i. p. 216.]

[x] Lib. ii. contr. Parmen. [cap. 10. p. 38.]

[y] In 2 Tim. hom. ii. [tom. xi. p. 671.] —Serm. de prodit. Jud. [hom. ii. tom. ii. p. 384.]

[z] De sacram., lib. iv. cap. 4. [tom. ii. col. 368 sqq.]

[a] Epist. i. [al. v. tom. iv. part. 2. col. 10.] et epist. lxxxv. [al. cx.] ad Evagrium, [col. 802.] et in Sophon. cap. iii. [tom. iii. coll. 1671, 2.]

[b] De trinit., lib. iii. cap. 4. [tom. viii. col. 798.]—Contra Faust. Manich., lib. xx. cap. 13. [tom. viii. col. 342.] et serm. xxviii. de verbis Domini. [al. serm. lxxxiv. tom. v. append. col. 152.]

[c] Dial. i. [tom. iv. p. 26.]

[d] [Eusebius Emissenus,] Serm. v. de paschate. [Max. bibl. vet. patr., tom. vi. p. 636, 7.]

[e] Dial., lib. iv. cap. 58. [tom. ii. col. 472.]

[f] De fide, lib. iv. cap. 14. [p. 266 sqq.]

[g] In 1 Cor. cap. x. [Max. bibl. vet. patr., tom. viii. p. 967.]

[h] Lib. de corpore Domini. [e. g. capp. 4, 5.]

refuse: if either one or other had been necessary they should have been clearly taught it, and if they had, there is no reason to believe but they would have kept the *depositum*, there being no temptation to the contrary, and no difficulty in the thing, and no great labour to preserve; the daily use of the church would have had in it no variety, for no traditions are surer or easier preserved than the λειτουργικὰ, 'the matters of liturgy,' and the rituals apostolical: which when we find that they were unitedly and consentingly kept by the ancient churches, we may well suppose the apostles to be the first principle of derivation, and that the thing itself was necessary and a part of the religion; but if at first they varied, they had no common principle, and therefore they had no necessity.

§ 6. Thus that the bishop or priest should be the only minister of consecration is an apostolical canon or rule; *ad quorum preces Christi corpus sanguisque conficitur*, saith S. Hierome[1]: and the continuation and descent of this particular from the manners of the apostolical ministration is evident in the fore-alleged testimonies. Now because by this constant derivation we can pursue the track up to the apostles, and from their practice and teaching of it we can understand it to be the will of God, and because this whole ministry is an act of grace and depends only upon the will of God, we perceive the thing to be necessary and unalterable, we must look for grace in the ministries of grace so as God hath appointed them; and therefore in these things the churches of the succeeding ages have no authority, no liberty, no variety. That women do communicate in the holy mysteries is not set down in the institution: but the church derives her warranty from the interpretation and order and practice apostolical: the church was taught by the apostles to admit them, and she always did it; and these things amongst sober and modest men do sufficiently prove one another. They always did it, and therefore they were taught it by the apostles: and they were taught to do so by the apostles, and therefore they were obliged to do it. And now in matters of salvation and common duty, the rule of the church is, *Scriptura loquens in masculino procedit etiam in fœminino*[j]. There is no difference in sexes, and before God it is now as it shall be in the resurrection, 'there is neither male nor female with Him,' but all alike.

§ 7. That the symbols were to be consecrated, and who were to consecrate and who were to receive, were of great necessity to be taught and determined: and in all this we see unity and necessity, authority and obedience; but when we go beyond this, and the plain and necessary and constituent parts of the institution, we find variety and uncertainty. That bread is to be used is plain: but whether leavened or unleavened neither Christ nor His apostles have left in

[1] Epist. lxxxv. [al. ci. tom. iv. part. 2. col. 802.]

[j] Panormitan. in capit. 'Majores,' in princip. in 5to notab. [vid. fol. 214 b.]

charge or memory. That wine is to be blessed is certain: but whether mingled with water or not mingled, we are not determined by any authority. That the bread and wine are to be blessed we are sure: but in what form of words, and whether by the mystic prayer, or the words of institution, is not derived to us by sufficient tradition. That the Lord's supper is sacredly and with reverence to be received is taught us by the apostles: but whether this reverence ought to be expressed by taking it *virgine saliva*[k], 'fasting,' or not fasting, the apostles left the churches to their choice. In those things which did co-operate immediately to the grace of the sacrament, in those we were not to invent any thing, and in those we were tied to obey what was delivered us.

§ 8. And the same is the case in baptism, in which that which was necessary is that the person be baptized in water, and in the name of the Father, Son, and Holy Ghost: but whether the priest shall say, *Ego te baptizo*, as the Latins do, or *Baptizetur servus Christi*, as the Greeks do, is indifferent: and if the apostles had used any other little variety of words, yet if there was not in the first churches an unity and universality of practice, it is certain the apostles did not by their act or canon intend to oblige all christendom; but themselves did it with liberty, and therefore so might the churches after them.

§ 9. For, excepting those things which the apostles received from Christ, in which they were ministers to all ages, once for all conveying the mind of Christ to the generations to come, in all other things they were but ordinary ministers, to govern the churches in their own times, and left all that ordinary power to their successors, with a power to rule their churches, such as they had; and therefore whatever they conveyed as from Christ, a part of His doctrine or any thing of His appointment, this was to bind for ever; for Christ only is our lawgiver, and what He said was to last for ever: in all things which He said not, the apostles could not be lawgivers, they had no such authority; and therefore whatsoever they ordered by their own wisdom, was to abide as long as the reason did abide; but still with the same liberty with which they appointed it; for of all men in the world they would least put a snare upon the disciples, or tie fetters upon christian liberty. But in divine commandments, and in what were the appointed ministries of grace, they were but the mouth of Christ and ministers of His holy Spirit; and in those things, what they told to the churches is our law for ever.

§ 10. Of the same nature is the distinction of bishops from presbyters, and the government of the church by them: for this being done in the apostles' times, and immediately received by all churches, who every where and ever since were governed by bishops and by presbyters under them, it is not only still to be retained unalterably,

[k] [Tertull. de jejun., cap. vi. p. 546.]

and is one of those great things in which the present churches have no liberty or authority to make a change, but it is to be concluded to be a law of Christ, which the apostles did convey with an intent to oblige all christendom: not only because the apostles could not in things indifferent oblige or make a law to succeeding ages, for they had no authority and could not govern churches after they were dead, and it was against the laws of Christ that the commandments of men should be taught for doctrines, and it is against christian liberty, that a lasting necessity should by man be put upon any thing, and the succeeding churches would be straitened in the liberty which Christ had given them, and in which they were bound to stand fast; not only all this, but this was a ministry of grace, the bishops were for ever appointed to give a gift by the laying on of hands: and therefore here was an appointment by Christ and by Christ's Spirit; for there is not in the world a greater presumption than that any should think to convey a gift of God, unless by God he be appointed to do it. Here then could be no variety, and no liberty: this canon apostolical is of eternal obligation, and the churches cannot otherwise be continued.

§ 11. But then in the appendages and annexes of this, the apostles did do their ministries; they did invocate the Holy Spirit upon those which were to be ordained: but in these they had no commandment what form to use. Imposition of hands and prayer were the necessary and appointed ministry; for in these things the churches did not vary, but took them from the apostles as the appointed liturgy; but with what form of words, and with the tradition of what instruments, is left to the choice and economy of every church.

RULE XIII.

IN THE RULES WHICH THE APOSTLES GAVE TO THEIR CHURCHES IN THINGS INDIFFERENT, THE CHURCH HATH A LIBERTY; BUT IT IS NOT TO BE USED BUT FOR GREAT REASON AND GREAT NECESSITY, AND FOR THE EDIFICATION OF THE PEOPLE COMMITTED TO THEIR CHARGE.

§ 1. THE reasons of this rule are these two. First, because it is a great regard to the honoured names of the apostles, the pillars and foundations of the church, that there be not an easy change made of what they in wisdom had determined to be the measures of order and decency. But this is to be understood in such things which change not, and whose nature although it be not of moral obligation, yet the reason that bound it first may be perpetual, and such which cannot be succeeded to, and cannot be excelled. Thus the

keeping of the Lord's day, besides all the other reasons derived from the nature of the thing, yet even for this alone, because it derived from the apostles, is to remain so for ever: because the reason being at first competent for which they kept their assemblies, and gave that day to religion, and the same reason remaining for ever, and another cannot come in place of it, and a greater there cannot be, although the churches are not in conscience directly bound, yet collaterally and indirectly they are. For it would be a plain contempt of the persons and wisdom of the apostles, besides the disrespect to the mystery itself, to change the sunday festival into any other day; for since there can be no reason for so doing, and a greater blessing than Christ's resurrection we are not to expect, and a greater reason for the keeping of a day than a thanksgiving for the greatest blessing there cannot be (except a divine commandment), the only reason why any church should change it must relate to the apostles, and therefore be no less than a contempt of their persons and a lessening of their eminence, and could not be less than an intolerable scandal.

§ 2. The other reason is, because the apostles even in things where they had no divine commandment, yet had the Spirit of God[1], the spirit of wisdom and government; and therefore where evidently there is not an inconvenience, or an uselessness, or an unreasonableness by reason of the change of times and circumstances, the churches are on the surer side when they follow the practice and precedents of the apostles, and have the confidences of a reasonable hope that such appointments are pleasing to Christ, since it is not unlikely that they were derived from the Spirit of Christ. But in these cases the practices and canons apostolical must be evident and proved: for since in these particulars of lesser concernment, we do but presume and conjecture that the apostles were taught by the Spirit immediately; if it be but a conjecture also that the apostles did teach or practise it, we have two lame feet, and cannot tread securely.

§ 3. I shall give one instance in this particular, but it will be of great use, not only for the verification of this explication of the rule, but in order to conscience, because it is in some churches tied with strait cords, and pretended to be very necessary, and of great obligation upon this stock, because it was appointed by the apostles: and it is the observation of Lent, and the weekly fasting days.

OF THE LENT FAST, AND THE WEEKLY FASTING DAYS.

§ 4. The fast of Lent, of all that are not, pretends the most fairly to have been an apostolical tradition; and if it could prove so it would with much probability pretend to have been imposed with a perpetual obligation.

§ 5. Of the first we have many testimonies from the ancient

[1] [1 Cor. vii. 40.]

fathers. So S. Hierome[m], *Nos unam quadragesimam secundum traditionem apostolorum toto anno, tempore nobis congruo*[n] *jejunamus.* So S. Leo[o], *Quod ergo in omni tempore unumquemque convenit facere Christianum, id nunc sollicitius est et devotius exsequendum, ut apostolica institutio quadraginta dierum jejuniis impleatur.* And again[p], *A sanctis apostolis per doctrinam Spiritus sancti majora sunt ordinata jejunia, ut per commune consortium crucis Christi, nos etiam aliquid in eo quod propter nos gessit ageremus.* To these agrees Isidorus Hispalensis[q], *Quadragesima in universo orbe institutione apostolica observatur circa confinium dominicæ passionis.* To which Dorotheus[r] a Greek abbot does consent, save only that he says more; for he affirms that the apostles did consecrate the seven quadragesimal weeks of fasting. So that here we have four ancient authors giving testimony that the Lent fast was a tradition or an appointment apostolical.

§ 6. Now if it came from the apostles by way of precedent or authority, the thing itself hath in its nature or appendage some advantages by which with much reasonableness we may believe it was intended to bind all ages of the catholic church. Because the usefulness of it will be as much now as ever it was; and it being a specification of the duty of fasting, which will never be out of season, and having always the same common cause, that is, the precedent of Moses and Elias, and the example of our blessed Saviour himself, the duty not being relative to time or place, and the reason of the institution being of perpetual regard, and the usefulness very great, and the thing pious and holy, and add to these, all churches ancient and modern having received it till now of late; it will be very like a duty incumbent upon all churches and all ages to observe this fast, which the apostles with so much reason did prescribe.

§ 7. And in pursuance of this we find some excellent persons in the ancient churches saying expressly that this institution is warranted to us from Christ. So S. Austin[s], 'The *Carême* or Lent fast hath an authority of a fast both in the Old testament, from the fast of Moses and Elias, and out of the gospel, because so many days the Lord fasted; demonstrating that the gospel does not differ from the law:' and again[t], 'By that number of forty in which Moses and Elias and our Lord himself did fast, was signified unto us that we must abstain from secular delights.' The same thing also is affirmed by S. Hierome[u], 'Moses and Elias in their forty days' hunger were filled with the conversation of God: and our Lord

[m] Epist. liv. ad Marcell. [al. xxvii. tom. iv. part. 2. col. 64.]

[n] ['toto orbe nobis congruo,' codd.]

[o] Serm. vi. de 40[ma] [p. 40 B.]

[p] Serm. ix. [p. 43 E.]

[q] Origin. l. vi. c. 19. p. 83 a. [§ 69. tom. iii. p. 291.]

[r] [De jejun. sanct., doctr. 15.] Biblioth. PP. Græco-lat., tom. i. p. 839. [Galland., tom. xii. p. 445 B.]

[s] Epist. cxix. ad Januar. [al. epist. lv. cap. 15. tom. ii. col. 139 A.]

[t] In psalm. cx. [tom. iv. col. 1244 B.]

[u] In Isai. lib. xvi. c. 58. [tom. iii. col. 428.]

himself fasted so many days in the wilderness, that He might leave to us the solemn days of fasting;' or, as he says in another place[x], *Hæreditatem nobis jejunii derelinquens, ad esum corporis sui sub hoc numero animas nostras præparat,* 'leaving to us the inheritance of fasting, under this number He prepares our souls for the eating of His body.' So Isidore, 'The first is the fast of Lent, which began from the fast of Moses and Elias, and of our blessed Lord, who fasted so many days.'

§ 8. Now although these fathers intend not to say that our Lord did command this fast, but gave us a precedent and an example to imitate as well as we can; He was the occasion why the church took that time, and performed that severity: yet the example of our blessed Lord cannot be neglected without sin; *Non enim, fratres, leve peccatum est fidelibus indictam quadragesimam a Domino violare, et jejunia consecrata ventris voracitate dissolvere, &c.,* said the author of the twenty-fifth sermon in the works of S. Ambrose[y]. 'It is not a light sin not to keep the Lenten fast which was indicted by our Lord, and with the greediness of the belly to dissolve these consecrated fasting days. For what does he deserve that breaks the fast which Christ indicted? If therefore thou wilt be a Christian thou must do as Christ did. He that had no sin fasted forty days: and wilt not thou who hast sinned keep the Lent fast? He (I say) that had no sin yet fasted for our sins: think therefore in thy conscience what a kind of Christian thou art, when Christ fasting for thee thou wilt eat thy dinner.' This author whoever he was (for it was not S. Ambrose) supposed that the example of Christ was a sufficient indiction of the quadragesimal fast. But it is to be observed that it is not unusual with ancient writers to affirm a thing to be by divine right, if there be in scripture but an authentic precedent and example of it. Thus when the canon-law affirms *in* 6 *de censibus, cap.* '*Quanquam*[z],' that the churches and churchmen are free from secular exactions not only by human but also by divine right: which saying because to our ears it must needs seem extremely harsh, the gloss upon the place does soften it, by referring it to the fact of Joseph to the Egyptian priests, and of Artaxerxes to the Israelites[a]. So that it is not intended that things of this nature be divine precepts properly so called; but such which the church for decent regard takes up in imitation of so great examples: and indeed they are such, which when the church hath upon such accounts taken up cannot be omitted without sin, if they be omitted without cause: for then they have authority when they are commanded by our superiors. But the example of our blessed Lord in such extraordinaries as these

[x] In Jonæ cap. iii. [tom. iii. col. 1487.]

[y] [al. serm. xxi. tom. ii. append. col. 418 E.]

[z] [Lib. vi. decret., lib. 20. cap. 4. col. 417, 8.]

[a] Vide Bellarm., lib. i. de cleric., c. 28. § 'Quinta propositio.' [tom. i. col. 404, 5.]

is but a very weak argument to introduce an institution, ordinary and perpetual, troublesome and ensnaring. But of this that we may be rid at once, I will set down the judgment of S. Austin [b] and of S. Chrysostom. 'In what shall we imitate the ways of Christ? Shall it be in that magnificence in which God was in the flesh? Or does He exhort us to this, or exact of us to do miracles such as He did? He did not say, Ye shall not be My disciples unless ye walk upon the sea, or unless ye raise to life him that hath been dead four days, or unless ye open the eyes of one that was born blind. What therefore does He mean, saying, Ye must enter by the door; Learn of Me, because I am meek and humble in heart? that's entering in by the door, that's the imitation of Christ that is required of us.' But S. Chrysostom[c] says the same thing, and more pertinently, and applied to this matter of fasting: 'He doth not say His fast is to be imitated, although He might propound those forty days of His: but Learn of Me, for I am meek and humble in heart: yea rather contrarily, when He sent the apostles to preach the gospel, He did not say, Fast, but, Eat whatsoever is set before you.' Now this argument of our blessed Lord's example being removed, and it being certain that from His example to conclude a divine precept in such extraordinaries and external actions is the worst argument of the world, and it being expressly affirmed by S. Chrysostom that Christ did not in His fasting propound Himself as imitable by us, we may now return to the first consideration and pretence, and enquire whether or no the fast of Lent was a tradition and canon apostolical: that is, not only whether this did descend from their practice (for if Christ's example did not oblige us in this, much less could that of the apostles); but also whether the apostles did deliver this as a rule for the practice of the churches in all descending ages.

THE LENT FAST IS NOT A TRADITION OR CANON APOSTOLICAL.

§ 9. 1) This first appears in that we find it affirmed often in antiquity that the fasts of the church were arbitrary and chosen, without necessity and imposition from any authority. Which thing was observed by Socrates[d], speaking of the Lent fast: 'Because no man can shew in any record that there was a commandment concerning this thing, it is manifest that the apostles did permit a free power in the same, leaving it to every one's mind and choice that every one might do what was good, without the inducement of fear or of necessity.' 'For so we ought to fast and to abstain,' saith Prosper[e], 'that we may not submit our souls to a necessity of fasting and abstaining, that we may not do a voluntary thing by an involuntary devotion.'

[b] S. Aug. in psal. xc. [serm. i. tom. iv. col. 962 A.]

[c] Homil. in Matth. xlvii. [tom. vii. p. 486 A.]

[d] Lib. v. cap. 22. Græc., 21. Latin. [p. 295. ed. Reading.]

[e] De vita contemplat., lib. ii. cap. 24. [p. 68 E.]

But of this we have elder testimony: for when Tertullian[f] scraped together all that he could to justify the Lents of Montanus, the new fasts which he for discipline would have had the churches for ever to observe, he laid hold upon the practice of the catholics to verify Montanus his imposition, saying that the catholic bishops did enjoin fasts sometimes, and *ex aliqua sollicitudinis ecclesiasticæ causa*, 'upon the occasion of some trouble or affliction in the church,' that is, temporary fasts, or solemn days upon special emergent accidents. He adds also[g] that they kept the paschal fast, the two days before Easter, in which 'the Bridegroom was taken from them:' but in these days they did sometimes live on bread and water, *ut cuique videbatur, et hæc ex arbitrio agentes et non ex imperio;* 'they did this not by any command, but by choice and as they pleased themselves:' for so the catholics did say and believe, *sic et observasse apostolos, nullum aliud imponentes jugum certorum et in commune omnibus obeundorum jejuniorum*, that the apostles did fast as every Christian else did and ought to do, *ex arbitrio, pro temporibus et causis uniuscujusque*, 'as every one had cause and opportunity and will;' but 'they imposed no other yoke of certain and for ever to be observed fasts.'

Laxus ac liber modus abstinendi
Ponitur cunctis; neque nos severus
Terror impellit: sua quemque cogit
Velle potestas.
Sufficit quicquid facias, vocato
Numinis nutu prius, inchoare,
Sive tu mensam renuas, cibumve
Sumere tentes.

So Prudentius[h], expressly affirming that even in his time there were no laws of set and annual fasts: for that very thing Victor Antiochenus[i] makes to be a difference between the Old and New testament; for the faithful in that time had fasting days appointed by God, *quæ proinde modis omnibus explere obligabantur, etiamsi alias noluissent*, 'which they were bound by all means to observe though against their will;' but under the gospel we fast by the love of virtue, and the choice of our own will, rather than by the co-action of any law. For *quibus diebus jejunandum sit nullo apostolorum præcepto definitum reperiri*, said S. Austin[k]; 'what days we are to fast is nowhere to be found determined by any precept of the apostles.'

§ 10. 2) This also appears in that we find the original of the quadragesimal or Lent fast attributed to other causes and beginnings than the tradition or canon apostolical. Cassian[l] says that 'as long as the perfection of the primitive church did remain, there was no observation of a Lent fast; for they who spent the whole year in

[f] De jejun., cap. xiii. [p. 551 C.]
[g] Cap. ii. [p. 545 A.]
[h] Cathemer. hymn. viii. [65.]
[i] In Marc. cap. ii. [Max. bibl. vet. patr., tom. iv. p. 375 H.]
[k] Epist. lxxxvi. ad Casulanum. [al. xxxvi. tom. ii. col. 78 C.]
[l] Collat. xxi. cap. 30. [p. 805.]

abstinence were not tied with the necessity of a precept or legal sanction. But when the multitude of the believers every day cooling in their devotion did brood upon their wealth .. *id tunc universis sacerdotibus placuit*[m], then it seemed good to the bishops 'to recall men to the work of holiness by a canonical indiction of fasts, and to give to God the tenth of their days.' So that the cause of the institution of this fast was the universal declension of the primitive piety: and the authors of it were the whole consent of bishops. Something like this was that of S. Chrysostom[n], who, complaining of the diminution of the primitive heats of piety, and their unworthy communicating, especially at Easter, adds, *συνειδότες οὖν οἱ πατέρες τὴν βλάβην τὴν γινομένην ἐκ τῆς ἠμελημένης προσόδου, συνελθόντες ἐτύπωσαν ἡμέρας τεσσαράκοντα νηστείας, εὐχῶν, ἀκροάσεως, συνόδων, κ.τ.λ.*, 'when the fathers had observed the hurt that came from so careless conventions, they meeting together appointed forty days for fasting and prayer and hearing sermons, and holy assemblies.' S. Austin[o] does not, as Cassian, impute it to the sanction of the bishops, nor to a council of the fathers, as S. Chrysostom, but to the custom of the church. *Ut quadraginta illi dies ante pascha observentur ecclesiæ consuetudo roboravit: sic etiam ut octo dies neophytorum distinguantur a cæteris*, 'the custom of the church hath established the observation of forty days before Easter, and the eight days after Easter for the novices:' both from the same principle. But it was not the authority of the apostles, but the custom of the church that made it into a law. In Irenæus[p] his time there was a custom of fasting about that time, for one or two days or more, but it was *καθ' ἁπλότητα καὶ ἰδιωτισμὸν συνήθεια*, 'a simple and a private custom.' But when it was made, it was only for the imperfect, and the men of the world that spent their year in gathering money, and misspent their time; they only were intended in the constitution. This we have from S. Hierome[q], *jejunia a viris prudentibus propter eos constituta fuisse qui magis sæculo vacant quam Deo;* 'some prudent men appointed the solemn fasts for their sakes who spent their time in the affairs of the world more than in religion.' And since it is consentingly affirmed that the great end of the Lent fast is for preparation to the Easter communion, what use (at least to this great purpose) can it be of to those pious persons who communicate every fortnight, or it may be every week in the year? But it is true that the great end and ministry of the Lent fast was in order to the Easter communion, but it was of such persons who being admitted to public penance upon Ash-wednesday were reconciled and admitted to the communion upon Easter day: which cus-

[m] Ibid., cap. 29. [p. 804.]

[n] In Vet. test., hom. in eos qui pascha jejunent. [contr. Jud., hom. iii. tom. i. p. 611 C.]

[o] Epist. cxix. ad Januar. [al. lv. tom. ii. col. 141 D.]

[p] Apud Euseb., lib. v. cap 26. [al. 24. p. 248.]

[q] In Galat., lib. ii. [cap. 4. tom. iv. part. 1. col. 272.]

tom being not in use, the use of Lent in order to the chief end to which it did minister is wholly lost. It was therefore true which S. Hierome said, that Lent was for the imperfect and secular persons, for public penitents and persons convict of scandalous crimes, for men of the world, and not for the religious, who every month or week observe the religion of Easter, and live in a state of perpetual preparation. *Perfecti non tenentur lege jejunii;* 'they that all the year lived strictly were not bound to the observation of Lent:' so Cassian[r]; and from him Isidorus Hispalensis[s] and Rabanus Maurus[t]; and the same thing also was affirmed by S. Chrysostom[u], from whom Cassian, who was his scholar, might receive it.

§ 11. 3) Some of the ancient and primitive writers affirm pope Telesphorus to have been the first author of Lent fast about the year CXXVI. So Eusebius in his *Chronicon*[x] affirms, *Quadragesimale jejunium a Telesphoro per hoc tempus institutum ac præceptum quidam scribunt,* 'some write that Telesphorus commanded the quadragesimal fast.' Scaliger[y] believes this not to be the saying of Eusebius, as not being to be found in the Greek MS. copies: but however, till Scaliger's time it was in the middle ages of the Latin church and so downwards believed; and it was affirmed expressly by Rabanus Maurus[z] and Rupertus[a].

§ 12. 4) The thing and the name was unknown in the church in the first three ages. This is very apparent in Tertullian, who making his apology for the fasting days of Montanus, says they are no such great matter that the ψυχικοὶ, 'the spiritual men' (so he calls the catholics), should complain of them as of so intolerable yoke upon the disciples. It was but ten days in all; two weeks, abating saturdays and sundays: and Sozomen[b] says these two weeks were before Easter. Now if the catholics had known of our Lent then, of forty days' fast, they would never have been so unreasonable to complain of the ten days of Montanus[c]; and that was all he imposed in the whole year, let the time be when it will. And yet this was more than the catholics did; for when from their practice (as I noted before) Tertullian[d] would fain have drawn some warranty and countenance, he says that 'the apostles did not quite extinguish all difference of days; for if they did, why did the catholics then observe Easter every year? why the fifty days of joy after it? why the wednesday and friday fast, and (Good friday or) the preparation day? and why the saturday fast? though indeed this ye never fast but at

[r] [Collat. xxi. cap. 29. p. 804.]
[s] De offic. eccles., lib. i. c. 37. [tom. vi. p. 406.]
[t] De instit. cleric., lib. ii. cap. 20. [tom. vi. p. 18.]
[u] Homil. x. in Genes. [tom. iv. p. 71 E.]
[x] [p. 169. ed. fol. Burdig. 1604.]
[y] [In loc. p. 198. ed. fol. Lugd. Bat. 1606.]
[z] Ubi supra, cap. 34. [p. 22.]
[a] De divin. offic., lib. iv. cap. 9. [tom. ii. p. 639.]
[b] Sozom., lib. vii. cap. 19. [p. 308.] —Petav. in notis ad Epiph. [p. 361.]
[c] Tertull. de jejun., cap. xv. [p. 552 C.]
[d] Cap. xiv. [p. 552 B.]

Easter.' Here is all the solemnities both of feastings and fastings which the church then had: and therefore it is easy without much diligence to discover the weakness of those pretences which derive from more ancient record, but indeed are nothing but deceptions and interpolations. Such as is the sixty-ninth canon apostolical[e], which commands the observation of Lent to a clergyman under pain of deposition, to a layman under excommunication. But the imposture of these canons, especially of the last thirty-six, amongst which this is one, are abundantly acknowledged by men of all persuasions. And so is that of S. Ignatius to the Philippians[f], 'Despise not the Lent, for it contains an imitation of the conversation of our Lord.' But of this epistle the ancients make no mention, and that it is supposititious is very fully proved by the learned and most reverend primate of Armagh[g], and it is so notorious as nothing can be more; for the author of this epistle condemns that which S. Ignatius and his neighbour churches did, and calls him 'a companion of them that killed Christ, that keeps Easter after the manner of the Jews.' But of this enough. But as to the thing; if the Lent fast were of apostolical institution, it were strange there should be no mention of it in the certain writings of the three first ages; not a word of it in Justin Martyr or S. Irenæus, in Tertullian or Clemens Alexandrinus, in Clemens Romanus his genuine epistle to the Corinthians, nor in S. Cyprian. There is indeed a little shred taken out of Origen's tenth homily on Leviticus[h], *Habemus enim quadragesimæ dies jejuniis consecratos*, 'we have the days of Lent designed for fasting.' But concerning this I can only say that the homilies were supposed to be S. Cyril's, written in the fifth age and published in his name, but whoever be the author, he that wrote them destroys the letter of the scripture all the way, out of his own brain, and is a man of no great authority, says Bellarmine[i]: and therefore it remains certain that in the three first ages of the church there was no mention made of the quadragesimal or forty days' fast in Lent, and therefore it was not derived as a law or by rule from the apostles: but so strange a thing it was that there should be any common prescript fasts, that Apollonius[k] accused Montanus for it, he was διδάξας λύσεις γάμων, καὶ νηστείας νομοθετήσας, 'he taught the solutions of marriage, and made a law for fasting days.'

§ 13. 5) The quadragesimal fast was relative and ever in order to the Easter feast, and therefore could not be before that for whose sake it was appointed. But the feast of Easter was, and the sunday festival was introduced by custom and arbitrary choice, for relaxation of labours and the memory of Christ's resurrection: indeed it was at

[e] [al. can. 61. Coteler. patr. apost., tom. i. p. 451.]
[f] [cap. 13. p. 119.]
[g] [Ussher.] Dissert. ad Ignat., cap. 12. [apud Coteler. patr. apost., tom. ii. p. 226.]
[h] [tom. ii. p. 246 D.]
[i] De verbo Dei, lib. iv. cap. 11. [tom. i. col. 249.]
[k] [Apud Euseb. H. E. v. 18. p. 233.]

the beginning of the dissemination and prevailing of christianity, but it was without a divine command, or an apostolical canon, if we may believe Socrates[m]. Τὴν ἑορτὴν τοῦ πάσχα οἱ ἄνθρωποι .. ἕκαστοι κατὰ χώρας ὡς ἐβουλήθησαν .. ἐξ ἔθους τινὸς ἀπετέλεσαν· οὐ γὰρ νόμῳ τοῦτο παραφυλάττειν ὁ Σωτὴρ ἢ οἱ ἀπόστολοι ἡμῖν παρήγγειλαν, 'the feast of Easter and other feasts, every man as they pleased in several places did out of a certain custom celebrate the memory of the salutary passion: for neither our Saviour nor the apostles appointed this by a law.' For the apostles did not trouble themselves about making laws for feasts, ἀλλὰ βίον ὀρθὸν καὶ τὴν θεοσέβειαν εἰσηγήσασθαι[n], 'but to introduce piety and a good life.' The rest was permitted to the good will of the churches, who being sensible of the great benefits of Christ's passion and resurrection, would quickly introduce a custom of such a pious gratitude: and Nicephorus[o] tells the same story, and in words very like. And the thing was not long in doing; it was so reasonable, so pious, so obvious, so ready and prepared, that at the very beginning all Christians did it, though, as it happens, in several churches after several manners. And supposing that these Greeks say true, yet it is no more lessening to the sacredness of that great feast, that the apostles did not intend to make laws concerning it, than it is to baptism, that S. Paul says, "Christ sent him not to baptize but to preach the gospel;" that is, though to baptize was a holy office, yet he was to attend something that was greater and required his diligence and presence. But this adds some moments to the sacredness of this and other such feasts, that the apostles left it to the piety and good will of the churches, as knowing that the Spirit of God, which they had received to this and greater purposes, was more than sufficient for the leading them into a specification of their piety and gratitude upon such great causes: and it was a very great matter that instantly all churches did consent in the duty, without any law, or common teacher, but the Spirit of God and right reason. The result of this consideration is this, that if the apostles left the celebration of Easter and other feasts to the choice and piety of the churches, it is not likely that they bound the Lent fast by a canon, since the Lent was always acknowledged to be a preparation for Easter, and was never heard of before there was a christian Easter. But if I may have leave to interpose my conjecture (for it is no more) I suppose Socrates by *pascha* does not mean the day of the resurrection, but the day of the passion; and that he intends only to say that the solemnity of the Good friday devotion was not appointed by Christ and His apostles, but left to the piety and gratitude of the church. The reasons of my conjecture are these. 1) Because Socrates[p] calls it μνήμην τοῦ σωτηριώδους πάθους, 'the memorial of Christ's passion;' which the Easter sunday was not, but of the resurrection. 2) Because we find the word *pascha* used by the ancient

[m] Lib. v. c. 22. [p. 292.]
[n] [ibid.]
[o] Hist., lib. xii. c. 32. [ad fin.]
[p] [ubi supr.]

fathers in the same sense; τὸ πάσχα νηστεύειν said Timotheus Alexandrinus[q], 'to fast on the Pasch:' so ἡ νηστεία τοῦ πάσχα, S. Clement[r] calls the Good friday fast, 'the paschal fast,' meaning that then began the Jewish passover, and then Christ our passover was offered for us. So Tertullian[s], *Sic et die paschæ, quo communis et quasi publica jejunii religio est, merito deponimus osculum, &c.*: 'the day of the Pasch is a public and a common day for the religion of fasting;' which because it was never true of Easter-day, and being always true of Good friday, he must mean this. 3) Because it is very probable that the Easter festival was in use, though not commanded, in the apostles' time[t], therefore because they kept the memorial of the resurrection the first day in every week; and therefore Socrates could not in all likelihood mean that day, but the *pascha passionis*, 'the paschal passion,' not the paschal resurrection. And then upon this account, though this fifth argument will not prevail, it is because we need it not; for whatever destroys the premisses in this case, does establish the conclusion. For if by *pascha* he means the paschal fast, that is, Good friday, then he gives testimony, and that very consonantly to the prime antiquity, that it was left free and undetermined by Christ and His apostles: but if he should mean the Easter feast, and did say true, yet it will follow from hence that much more must the preceding fast be left undetermined.

14. 6) If any man should say that kings are all created, as Adam was, in full stature and manhood by God himself immediately, he could best be confuted by the midwives and the nurses, the schoolmasters and the servants of the family, and by all the neighbourhood, who saw them born infants, who took them from their mothers' knees, who gave them suck, who carried them in their arms, who made them coats and taught them their letters, who observed their growth and changed their ministries about their persons. The same is the case of the present article. He that says our Lent, or forty days' fast before Easter, was established by the apostles in that full growth and state we now see it, is perfectly confuted by the testimony of those ages that saw its infancy and childhood, and helped to nurse it up to its present bulk.

§ 15. For it is not to be denied but that from the very first ages of the christian church of which we have any records, it was with sacredness and religion observed that before the feast of Easter they should fast. Τὴν νηστείαν τοῦ πάσχα S. Clement[u] calls it, τὰς παραδεδομένας νηστείας εἰς τὸ κοινὸν, καὶ φυλασσομένας ὑπὸ τῆς ἐκκλησίας· so the council of Gangra[x] about the time of the Nicene council, 'the fasts which were delivered in common, and observed by

[q] [Respons. canon., apud Bevereg. synodic., tom. ii. part. 1. p. 167.]

[r] [Const. apost., lib. v. cap. 13. p. 318.]

[s] Lib. de orat., cap. xiv. [p. 135 A.]

[t] Vide lib. ii. chap. 2. rule 6. § 55, 6. [vol. ix. p. 461.]

[u] [Const. apost., lib. v. cap. 13. p. 318.]

[x] [can. 19. tom. i. col. 537.]

the church;' τὰς ὡρισμένας νηστείας, 'the appointed fasts,' so Constantine[y] called them. But this paschal fast was nothing like ours, it was not our quadragesimal; it was but a fast of one or two days at first and in some places. For at first the Christians were very shy of receiving any load of ordinances and burdens to their consciences, as soon as ever they had entered into the liberty of Christians. They did all that reason and all that love would require: but if love was the parent of their observations, they would do them in love, and not in necessity, lest they should be again intangled in a yoke of bondage. That they kept their fasts with liberty, besides the foregoing testimonies, is expressly affirmed by Theodoret[z], who blaming the heretics that abstained from flesh and wine as being abominable, *Ecclesia vero*, saith he, *de his nihil præcipit; neque enim horum usum interdicit: ideo alii quidem permissis voluptatibus securi fruuntur, alii vero abstinent; et nemo qui recte sapiat condemnat eum qui comedit; nam et abstinentia et participatio sunt in mentis potestate:* 'but the church commands nothing in these things, and forbids not to use flesh and wine; and therefore some enjoy them freely, others do abstain, and no wise man condemns him that eats; for to eat or to abstain is in the power of every man's will.' Now if the church had from the apostles received a law of the Lent fast, or if in the church there had been a law to command abstinence from flesh in Lent, it had not been truly said of Theodoret, *Ecclesia de his nihil præcipit;* for a commandment for a time and a revolving period certainly is a commandment. But this further appears in the variety which is in all the actions and minds of men when they are at their own choice. Of this a fragment of Irenæus mentioned by Eusebius[a] is a great testimony: for there had been an unlucky difference between the western and eastern churches about their keeping of Easter, and pope Victor was transported into heats upon the question, and received from S. Irenæus this sober advertisement, 'For there is not only a controversy about the day of Easter, but about the kind of fasting. For some suppose they ought to fast but one day, others two, others more; some measure their day by forty hours of day and night. And this variety of them that observe the fasts did not begin in our age, but long before us with our ancestors, who, as it is likely, retaining a custom introduced by simplicity and a private choice, did propagate it to posterity. And yet nevertheless all these lived peaceably one with another, and we also keep peace together; for the difference of the fast is so far from violating the agreement of faith, that it does commend it rather.' Here was the paschal fast observed by all men, but with great variety and a proportionate liberty. The cause of the variety was this, which was also the ground of their practice. They thought that the words

[y] Apud Socrat. lib. ii. hist., cap. 3. [lege lib. i. cap. 9. p. 33.]

[z] Lib. v. hæretic. fabul., cap. 29. [tom. iv. p. 479, 80.]

[a] Lib. v. hist., cap. 26. [al. 24.]

of Christ, "When the bridegroom shall be taken from them, in those days shall they fast," were to be meant of the interval of Christ's death and burial, as we learn from Tertullian[b]. Now because it was but one whole day that Christ was in the grave, some fasted but one day, beginning on the friday afternoon. Others consider that Christ was about forty hours dead, and the bridegroom was absent so long; and therefore reckoned their fast to forty hours, beginning from the ninth hour on Good friday, and eating nothing till the morning of Easter day: and this was the most severe and the most prevailing amongst them; and this is the τεσσαρακοστὴ, the 'quadragesimal fast,' this gave occasion to the name, which was kept when the forty hours was changed into forty days, and new analogies and new reasons found out for it, and their fasting for the absence of the bridegroom was changed into a fasting in imitation of Moses and Elias, and our blessed Saviour in the wilderness. Only by the way let me observe, that at first they had no appointed fasts, but of those hours in which the bridegroom was taken from them, that is, none but the paschal fast; as Tertullian[c] expressly affirms, *Illos dies jejuniis determinatos putant in quibus ablatus est sponsus, et hos esse jam solos legitimos jejuniorum christianorum,* 'the catholics had no other days appointed for fastings, no other were the legitimate fasting days for Christians,' (as they thought), 'but only those in which the bridegroom was taken from them.'

§ 16. But S. Irenæus said that some fast one day, some two, and others more. Some kept the whole six days of the passion week; we find mention made of it in Dionysius Alexandrinus[d] about the two hundred and fifty-fifth year of Christ, τὰς ἓξ τῶν νηστειῶν ἡμέρας, 'the six days of fasting;' but he affirms that all do not equally observe them; for some fast all the six days, some two, some three, some four, some none. But by Epiphanius[e] his time the fast had possessed the whole six days almost every where, τὰς ἓξ ἡμέρας τοῦ πάσχα ἐν ξηροφαγίᾳ διατελοῦσι πάντες οἱ λαοὶ, 'all the people spend the six days of the Pasch, or before Easter, in dry diet: but by this time the word τεσσαρακοστὴ or *quadragesima* had prevailed, and was used to signify the paschal fast. The word was used in the council of Nice, which commanded two synods every year to be held in the provinces, and the first of them to be ἐν τεσσαρακοστῇ[f], 'in the quadragesimal fast.' But this did not signify the fast of forty days, for that was not yet brought into the church.

§ 17. But first the matter is clear that the word *quadragesima* is often used in antiquity and by other good authors to signify a set time of fast, but plainly less than forty days. S. Hieromeg says

[b] Lib. de jejun., cap. xiv. [p. 552 B.]
[c] Lib. de jejun., cap. ii. [p. 544 C.]
[d] Epist. can. ad Basil. [apud Bevereg. synodic., tom. ii. part 1. p. 3 A.]
[e] Lib. iii. exp. fidei. [§ 22. vol. i. p. 1105 C.] et hæres. lxxv. [§ 6. p. 910 C.]
[f] [πρὸ τῆς τεσσαρακοστῆς,—can. 5. tom. i. col. 325 B.]
[g] Epist. liv. ad Marcel. [al. xxvii. tom. iv. part 2. col. 65.]

that the Montanists do make *tres in anno quadragesimas*, 'three Lents;' and yet two of them were but of five days a piece, and whether the third was more or less we cannot tell: and this Tertullian[h] plainly affirms, who was himself a Montanist. And this thing also came into the practice of some catholics; for they did so too in the time of Amalarius[i], they kept *tres quadragesimas*, 'three quadragesimal fasts;' and yet that before Midsummer and that before Christmas were much shorter than forty days. The same word is several times used by Rabanus Maurus[k] and Durandus[l]. But that the use of the word may be no prejudice to the right understanding of the thing, we find the thing noted by Socrates[m], and wondered at exceedingly, that since there was so great difference in the number of days, yet all alike called it τεσσαρακοστὴν, or 'the quadragesimal fast.' The same also we find in Sozomen[n], noting that some did only observe three weeks of five days to the week, out of the number of the seven antepaschal weeks, and yet nevertheless called it *quadragesima:* and the same also we find in Nicephorus[o], who (I suppose) transcribed it from them: and in Cassian's time, when the Lent fast came up to the number of thirty-six days, yet he still calls it the *quadragesima* or the forty days' fast: and it is no wonder, if Rigaltius[p] say true, that all the set and stationary fasts of the primitive Christians were called quadragesimals. But the first use of the words is in the Nicene council[q]; unless the words of Origen be allowed to be good record: but yet both in Origen and in the Nicene council, though the word be used, yet without any remark of the number of the days, or intimation of it, until the council of Laodicea[r], which mentions more weeks than one in Lent, commanding to fast also upon the thursday of the last week in Lent. For by this time it was come to three weeks, in some places more, and in some less, as appears in Socrates, Sozomen, Cassian and Nicephorus above quoted.

§ 18. But for the reason of the word *quadragesima*[s] there are various conjectures. Cassian says it is an imitation of Christ's fast of forty days, and so had the name from thence. But he adds some little cabalistical things of the number of forty in the scripture, which are to no great purpose. But his first conjecture is not altogether unreasonable; and Rigaltius makes use of it, saying that the apostles having obliterated the Jewish fasts, to which Christ's forty days' fast put an end, and asserted us into liberty, they would upon that day on which Christ wrought our liberty for us 'nailing the hand-writing

[h] Lib. de jejun., c. 15. [pp. 552, 3.]
[i] Lib. iv. de offic. eccles., c. 37. [Max. bibl. vet. patr., tom. xiv. p. 1028 F.]
[k] Lib. iv. de instit. cleric., cap. 1. [lege lib. ii. cap. 34. tom. vi. p. 22.]
[l] Lib. vi. rational., de 1ª 40mæ Dominic. [cap. 32.]
[m] Hist., lib. v. cap. 22. [p. 294.]
[n] Lib. v. [cap. 19.]
[o] [lib. xii. cap. 34.]
[p] In notis ad Tertul. de jejun. [p. 545.]
[q] [can. v. tom. i. col. 326.]
[r] A.D. ccccLx. [Harduin., cccLxxii.] can. 50. [tom. i. col. 790.]
[s] Collat. xx. cap. 28. [p. 802.]

of ordinances to His cross,' consecrate a fast to the memorial of this great work of redemption for us; *ut obliteratis Judæorum sabbatis, jejunia sua Christiani, quæ Domino suo tantula pro tantis offerrent, de jejunii dominici spatio vocitarent*[t], 'that the Christians might call their fast by a name taken from the duration of the Lord's fast, that since they could not attain to that great fast, they might at least have it in venerable memory.' But this, although it be ingenious and pretty, yet it is something violent, and hath no warrant from antiquity; and the question is better answered from the words of Irenæus in Eusebius, who says that they who kept the paschal fast would some of them produce the fast to forty hours: now the whole fast being in memory of the Bridegroom's being taken away, and He having been absent, as they computed it, forty hours, this proportion did better carry the analogy, and therefore easily carried away the name, and a quadragesimal of hours is as proper as a quadragesimal of days, and hath a better warranty than any other conjecture. But this I remarked before.

§ 19. But afterwards the number of weeks increased: it came in some places to six and seven weeks; so Cassian[u]. But it was *diverso more*, for some would fast saturdays, and some would not; but they made it but to be thirty-six days however: so we find it in S. Gregory[x], that forty-two days were the appointment of Lent, but taking away the sundays, six and thirty days remain for fasting. But in all this whole affair there was nothing yet universally determined by any law of the universal church. 'For in Rome about the year CCCCXXXVII they fasted but three weeks before Easter, (and out of them they excepted saturdays and sundays); but in Illyricum, in Greece and Alexandria they begin their Lenten fast above six weeks before Easter: others begin seven weeks before Easter, but fast by intervals, and observe but fifteen days in all: and yet all call this the quadragesimal fast[y];' so Socrates[z]. And S. Chrysostom[a] says it was the custom against Easter to ask every one how many weeks he had fasted; and you should hear some answering two, some three, some all. For at Constantinople the Lent was longest: it was of seven weeks there, and all up unto Phœnicia, as Sozomen[b] and Nicephorus[c] report: but all this while with liberty, by custom and without a law. S. Austin[d] tells that in some places they would not fast the thursdays in Lent: indeed the council of Laodicea had commanded they should, but that was but provincial, and did not oblige and was not received every

[t] [Ubi supra.]
[u] Collat. xxi. c. 27. [p. 802.]
[x] Lib. xl. homil. [in evang.] hom. 16. [tom. i. col. 1494.]
[y] Hæc clausula inseritur in loco non suo: oportuit enim post narrationem de ecclesiis Græca et Alexandrina interseri. Videat lector Hugonem Menardum in notis ad Gregor. Sacram. qui etiam aliter emendat hunc locum satis mendosum. [p. 52. 4to. Par. 1642.]
[z] Lib. v. c. 22. [p. 294.]
[a] Homil. xvi. ad pop. Antioch. [tom. ii. p. 168 D.]
[b] Lib. v. [c. 19.]
[c] Lib. xii. [c. 34.]
[d] Epist. cxviii. ad Januar. [al. liv. tom. ii. col. 127.]

where; and that saying which is reported out of the constitutions of S. Clement[e] might prevail as far, *Jejunium quintæ hypocritarum est.* But at Rome, this was then observed, they did not fast on thursdays, nor yet on tuesdays, or they might choose: so we find in S. Leo[f] exhorting them to the monday, wednesday, friday, and saturday fast, and on saturday to watch beside. And because of the defalcation of these days in every week, some that were very zealous made up their Lent to be eight weeks, and began it on *Sexagesima* sunday, but at last it settled upon Ash-wednesday, and hath endured so to this day in many of the western churches.

§ 20. Now if all this be not sufficient to prove that the forty days' fast of Lent was not a canon or institution apostolical, I cannot tell by what measures the question can be filled: and if the apostles were the authors of it, yet because the churches kept themselves in great liberty and variety, it is certain that if they did so still, there would be no diminution to religion. For the use of it being wholly for preparation to the Easter communion, and the setting apart some portion of our time for God's service, it can then only be of use, when it ministers to such ends with an advantage so great as to recompense the trouble, and so material as to quit it from a vain observance. But how it can be enjoined, and how it ought to be practised, I shall consider in the enquiries concerning the condition of ecclesiastical laws. Here I was only to quit the conscience of this snare which is laid for her by some unskilful fowlers, and to represent that the apostles did not by any rule or canon oblige the christian churches.

§ 21. That which remains is this, that we consider that it is and ought to be no prejudice to this liberty, that S. Hierome calls Lent an 'apostolical tradition.' For it was very easy for them who loved the institution, and knew it very ancient, and that the custom of it did descend from apostolical persons, to call it 'a tradition apostolical.' It is no wrong to S. Hierome if we think he did so here: for he did as much as this comes to in the question of the saturday's fast, for in his epistle to Lucinius[g] he says, *Unaquæque provincia abundet in sensu suo, et præcepta majorum leges apostolicas arbitretur,* 'let every province abound in their own sense, and suppose the precepts of their ancestors to be apostolical laws.' But that the churches had no such law upon them, but were at liberty, appears from all the premisses; which I sum up with the words of S. Austin[h]: —'The Christians, not that the meats are unclean, but for mortification, do abstain from flesh and fruits; some few always, or else at certain times:' *Sicut per quadragesimam fere omnes, quanto magis quisque vel minus seu voluerit, seu potuerit,* 'as in Lent almost all

[e] Const. apost., lib. vii. cap. 23. [p. 372.]

[f] Serm. iv. de 40ma [p. 39 A.]

[g] [Epist. lii. tom. iv. part. 2. col. 579.]

[h] Contr. Faustum Manich., lib. xxx. cap. 5. [tom. viii. col. 447 F.]

men, more or less according as every man is able, or as every man is willing.'

§ 22. He that desires to see more particulars concerning the history, the original, the variety and increase of Lent, may, if he please, read them in Cassian, in Amalarius, Alcuinus and Rabanus of old, and of late, in Durandus, in Hugo Menardus a Benedictine his notes *in Gregor. Sacramentarium,* in Petavius his notes upon Epiphanius, Rigaltius upon Tertullian, Scaliger's admirable animadversions upon Eusebius, in that excellent epistle of Erasmus to the bishop of Basil *de interdicto esu carnium,* in Delaunoy, Filescac and Daillé[1]. Out of these any man may satisfy his curiosity; I have endeavoured only to satisfy the conscience.

§ 23. Concerning the weekly fasts of friday and saturday, the former of them is of great antiquity in the church, as being in use in Tertullian's time, and without variety always observed after it once began. We find the wednesday and friday fast mentioned by Clemens Alexandrinus[j], and the wednesday station is equally in Tertullian. But the saturday fast was for some ages counted abominable in the whole church; but it came into the Latin church in time, but with so much scandal to the Greeks, that in the year of our Lord DCCVII they excommunicated them that fasted on the saturday, and to this day persevere in the same mind. But that neither one nor the other was of apostolical institution, is of itself clear by the consequence of the former discourse concerning Lent; the apostles having made no laws concerning fasting days, as I have made apparent. The rogation fast (all the world knows) was instituted by Mamertus bishop of Vienna: and as for the ember-weeks, they can pretend to no antiquity that is primitive, and rely for their authority upon a spurious epistle of pope Calixtus, which is pretended to have been written about the year CCXXI, and which is abundantly detected of forgery by many persons, but especially by Mr. Blondel. Tertullian's words are a hatchet to cut off all fasting-days from pretending to apostolical authority; affirming that the Montanists did fast but two weeks in the whole year, and in them not on saturdays and sundays (though S. Hierome is pleased to lay three Lents to their charge), and that the catholics blamed them for imposing so much; but themselves did fast only upon those days the bridegroom was taken from them, that is, the paschal fast; that they did sometimes interpose half-fasts, and live on bread and water for some time, but *ut cuique videbatur, hæc ex arbitrio agentes, non ex imperio*[k], 'as every man saw cause, doing these things by choice and not by command.'

§ 24. The result of this discourse is this, that the apostles did not lay a yoke upon the disciples' neck in the matter of fasting, much less

[1] De jejuniis et 40ma [lib. iii. p. 371 sqq. 12mo. Davent. 1654.]

[j] Stromat., lib. vii. [cap. 12. p. 877.]

[k] [Tertul. de jejun.] contra psych., cap. ii. [p. 545 A.] capp. xiii, xv. [pp. 551, 2.]

in the forty days' fast of Lent; that as in relation to the apostles, the conscience is at liberty. Now whether or no any positive constitution of the rulers of our churches can or do oblige the conscience to the observation of Lent, and how far, I shall consider in the next paragraph of this chapter.

RULE XIV.

THE CANONS OF THE ANCIENT GENERAL AND PROVINCIAL COUNCILS ARE THEN LAWS TO THE CONSCIENCE WHEN THEY ARE BOUND UPON US BY THE AUTHORITY OF THE RESPECTIVE GOVERNORS OF CHURCHES.

§ 1. A general council is nothing but the union of all the ecclesiastical power in the world. The authority of a general council in matters of government and discipline is no greater, no more obligatory than the authority of a provincial council, to those who are under it. A general council obliges more countries and more dioceses, but it obliges them no more than the civil and ecclesiastic power obliges them at home. A general council is an union of government, a consent of princes and bishops, and in that every one agrees to govern by the measures to which there they do consent: and the consent of opinions adds moment to the laws, and reverence to the sanction; and it must prevail against more objections than provincial decrees, because of the advantage of wisdom and consultation which is supposed to be there, but the whole power of obligation is derived from the authority at home. That is, if twenty princes meet together and all their bishops, and agree how they will have their churches governed, those princes which are there and those bishops which have consented are bound by their own act, and to it they must stand till the reason alters, or a contrary or a better does intervene; but the prince can as much alter that law when the case alters, as he can abrogate any other law to which he hath consented. But those princes which were not there, whatever the cause of their absence be, are not obliged by that general council; and that council can have no authority but what is given them by consent, and therefore they who have not consented are free as ever.

§ 2. The council of Florence, so called because, though it was begun at Ferrara, yet it was ended there, pope Clement VII. calls the eighth general council in his bull of April 22, MDXXVII.[1], yet others call it the sixteenth: but it was never received in France, as

[1] Vide Surium in epist. ad lectorem, ante concil. Ferrar., tom. iv. concil. [post synodum, p. 497. ed. Bin. fol. Col. Agr. 1606.]

Panormitan[m] tells us: for the king of France did forbid expressly and upon great penalties that any of his subjects should go to Ferrara to celebrate that council; and after it had been celebrated, and Charles VII. was desired by pope Eugenius to accept it, he told the legates plainly that he had never taken it for a council, and he never would. The council of Basil, though the king of France had sent his embassadors thither, and had received it as a council, yet he approved it but in part, for he rejected the last thirteen sessions, and approved only the first two and thirty; some of them as they lie, others with certain forms and qualifications[n]: and this was done to fit and accommodate them to the exigencies of the times and places and persons, saith Benedict[o] a French lawyer. And upon the like accounts the last council of Lateran is there rejected also. Thus in England we accept not of the council of Trent, and excepting the four first general councils, which are established into a law by the king and parliament[p], there is no other council at all of use in England, save only to entertain scholars in their arguments, and to be made use of in matters of fact, by them to understand the stories of the church. Where any thing else is received into custom and practice of law, it binds by our reception, not by its own natural force.

§ 3. But I have already spoken sufficiently of this thing[q]. I now only mention it to the purpose that those religious and well-meaning persons who are concluded by the canon of an ancient council, and think that whatever was there commanded it lays some obligation upon the consciences of us at this day, and by this means enter into infinite scruples and a restless unsatisfied condition, may consider that the ancient doctors of the church had no jurisdiction over us who were born so many ages after them; that even then when they were made they had their authority wholly from princes and consent of nations; that things and reasons, that jurisdictions and governments, that churches and dioceses, that interests and manners are infinitely altered since that time; that since the authority of those fathers could not be permanent and abide longer than their lives, it being certainly not greater than that of kings, which must needs die with their persons, that their successors may be kings as well as they, and not be subjects of the dead, the efficacy of their rules must descend upon succession by a succeeding authority; that therefore they prevail upon us by a new force by that which is extrinsical to them; and therefore in such cases we are to enquire whether the thing be good, and if it be, we may use it with liberty till we

[m] In tract. de concil. Basil. circa princ. n. 6. [fol. 127 b. ad calc. lectt. super decret.] Vide etiam Nicolaum de Clemangiis. [De annatis non solvendis, p. 106. opp. 4to. Lugd. Bat. 1613.]

[n] Vide proœmium pragmat. sanct. [fol. 27.—cura Cosmæ Buymier, 8vo. Lugd. 1532.]

[o] Guil. Benedict. in repetit. cap. Raynutius. [sect. 'Et uxorem Adelaisam,' § 234. fol. 62. col. 1. Lugd. 1575.]

[p] [Compare vol. v. p. 197.]

[q] Chapter iii. rule 7. [p. 249.] and chapter iv. rule 5. [p. 292.]

be restrained, but we may also choose; for then we are to enquire whether the thing be a law in that government to which we owe obedience: for that the fathers met at Laodicea, at Antioch, at Nice, at Gangra, a thousand, eleven hundred or thirteen hundred years ago, should have authority over us in England so many ages after, is so infinitely unreasonable, that none but the 'fearful and the unbelievers[r],' the scrupulous and those who are δοῦλοι τῇ φύσει, 'of a slavish nature,' and are in bondage by their fear, and know not how to stand in that liberty by which Christ hath made them free, will account themselves in subjection to them. If upon this account the rulers of churches will introduce any pious, just and warrantable canon, we are to obey in all things where they have power to command; but the canon, for being in the old codes of the church, binds us no more than the laws of Constantine.

RULE XV.

THE LAUDABLE CUSTOMS OF THE CATHOLIC CHURCH WHICH ARE IN PRESENT OBSERVATION DO OBLIGE THE CONSCIENCE OF ALL CHRISTIANS.

§ 1. THIS we have from S. Paul, who reproves the contumacy and regardless comport of those who, against the usages of Christians and the places where they lived, would wear long hair: "we have no such custom, nor the churches of God." In such cases where there is no law, the manners of Christians introduce a law so far, that we cannot recede from it without some probable cause; or if we do, we cannot do it without scandal and reproach. And indeed it is an act of love to conform to the customs of Christians with whom we do converse, who either will think you blame their custom, or despise their persons, if you comply not. S. Austin[s] gave his advice to the same purpose, *In his rebus de quibus nihil certi statuit scriptura divina, mos populi Dei vel statuta majorum pro lege tenenda sunt: et sicut prævaricatores divinarum legum, ita contemptores ecclesiasticarum consuetudinum coercendi sunt:* 'if the holy scriptures have not interposed in the particular, we must keep the customs and decrees of our ancestors as a law: and as they that prevaricate the divine laws are to be restrained, so are all they that despise the customs of the church.' It is a catholic custom, that they who receive the holy communion, should receive it fasting. This is not a duty commanded by God: but unless it be necessary to eat, he that despises this custom, gives nothing but the testimony of an evil mind.

[r] [Rev. xxi. 8.]
[s] Epist. lxxxvi. ad Casulanum presbyter. [al. xxxvi. tom. ii. col. 68 E.]

§ 2. 1) But this is first to be understood in such customs as are laudable, that is, such which have no suspicion or moral reproach upon them, such which are reasonable and fit for wise and sober persons. It was a custom of the primitive church, at least in some places, not to touch the earth with the bare foot within the octaves of Easter; this was a trifle, and tending to fantastic opinions and superstitious fancies, and therefore is not to be drawn into imitation; only so long as it did remain, every man was to take care he gave no offence to weak persons, but he was to endeavour to alter it by all fair means and usages. It was a custom in many churches anciently and not long since in the church of England, that in cases of the infants' extreme danger the midwives did baptize them. This custom came in at a wrong door, it leaned upon a false and superstitious opinion; and they thought it better to invade the priest's office, than to trust God with the souls which He made with His own hands and redeemed with His Son's blood. But this custom was not to be followed if it had still continued; for even then they confessed it was a sin, *Factum valet, fieri non debuit;* and evil ought not to be done for a good end. *Quod si a mulieribus baptizari oporteret, profecto Christus a matre baptizatus esset, et non a Joanne; aut cum nos ad baptizandum misit, misisset mulieres nobiscum ad hoc: nunc vero nusquam neque jussit Dominus, neque per scripturam tradidit, utpote qui naturæ convenientiam et rei decorum nosset, tanquam naturæ auctor et legislator,* said the author of the constitutions under the name of S. Clement[t]: 'if women might be suffered to baptize, Christ need not to have gone to S. John, but might have been baptized by His mother; and Christ would have sent women along with the apostles when He gave them commission to preach and to baptize. But now our Lord hath neither commanded any such thing by His word, or in scripture; for the author and lawgiver of nature knew what was agreeable and decent for their nature.' To this agrees that of Tertullian[u], *Non permittitur mulieri in ecclesia loqui, sed nec docere, nec tingere, nec offerre, nec ullius virilis muneris, nedum sacerdotalis officii sortem sibi vindicare,* 'a woman is not permitted to speak in the church, nor to teach, nor to baptize, nor to offer, nor to do the office of a man, much less of a priest.' This custom therefore is of the nature of those which are to be laid aside[v]. Οὐδεὶς βαπτίζει εἰ μὴ χειροτονίαν ἔχει, 'no man baptizes but he that is in holy orders,' said Simeon of Thessalonica[x]; and I think he said truly. But above all things, opinions are not to be taken up by custom, and reduced to practice: not only because custom is no good warranty for opinions, and *voluntas fertur carere oculis, intellectus pedibus,* 'the

[t] Lib. iii. cap. 9. [p. 286.]

[u] Lib. de virg. veland. [cap. ix. p. 178 A.]

[v] See 'The divine institution of the order and offices ministerial,' sect. iv. [vol. v. p. 20.]

[x] [In lib. MS. de sept. sacram., laudat. a Petr. Arcudio, de concord. eccles. occid. et orient., lib. i. cap. 11. p. 25. fol. Par. 1626.]

will hath no eyes, and the understanding hath no feet;' that is, it can do nothing without the will, and the will must do nothing without that; they are a blind man and a lame when they are asunder, but when they are together they make up a sound man, while the one gives reason, and the other gives command: but besides this, when an opinion is offered only by the hand of custom, it is commonly a sign of a bad cause, and that there is nothing else to be said for it; and therefore it was a weakness in Salmeron[y] to offer to persuade us to entertain the doctrine and practice of indulgences, purgatory, invocation of saints, images and the like, because they are customs of the church, meaning his own.

§ 3. 2) This is to be understood also of the customs of the catholic church. For if the churches differ, it is indifferent to take either or neither as it may happen. Clemens Alexandrinus[z] said it was a wickedness to pull the beard, because it is our natural, it is a generous and an ingenuous ornament: and yet Gregory VII.[a], bishop of Rome, made archbishop James shave his beard close, pretending that it had been always a custom in the western churches; *Consuetudini sanctæ . . obedire coegimus,* 'we have constrained him to obey the holy custom.' In such cases where several churches have several usages, every church is to follow her own custom, and every of her subjects to obey it.

§ 4. 3) Though every subject is tied to the custom of his own church, yet he is not to give offence when he converses with another church that hath a differing custom: according to that rule and example of S. Ambrose[b], *Quando hic sum, non jejuno sabbato; quando Romæ sum, jejuno sabbato: et ad quamcunque ecclesiam veneritis, ejus morem servate, si pati scandalum non vultis aut facere,* 'when I am at Milan I do not fast on the saturday, when I am at Rome I do: and to whatsoever church you shall come, keep the custom of that church, if ye will neither give nor receive offence.' And these words S. Austin[c] made use of to this very purpose, *Totum hoc genus rerum liberas habet observationes, nec disciplina ulla est in his melior gravi prudentique Christiano, quam ut eo modo agat quo agere viderit ecclesiam ad quam forte devenerit:* the best way is to do as that church does where you happen to be. And in the same instance S. Hierome[d] gave answer to Lucinius, *servandam esse propriæ ecclesiæ consuetudinem:* 'the custom of the place of our own church is to be observed.' And therefore at Milan it is counted a violation of their rights when the Roman priests come into the Ambrosian churches, and refuse to use the missal of S. Ambrose, but use the Roman. It is a custom in the church of England to uncover the head or to

[y] Disput. xviii. in 1 Cor. xi. in solut 8. dub. [tom. xiv. p. 146.]

[z] Pædagog., lib. iii. cap. 3. [p. 263.]

[a] Lib. viii. registri, epist. 10. [in concill. ed. reg., tom. xxvi. p. 438.]

[b] [Apud August.] epist. lxxxvi. [al. xxxvi. tom. ii. col. 81.]

[c] Epist. cxviii. [al. liv. col. 124.]

[d] [Epist. lii. tom. iv. part. 2. col. 579.]

bow the knee when the name of Jesus is named: the custom is not only innocent but pious, and agreeable to the duty of every Christian, and therefore abstracting from the injunction, the custom itself is sufficient to exact conformity of all modest persons. But if a son of the church of England shall come into other protestant churches who use it not, he is to comply with them in the omission, unless himself be persuaded that it is a divine commandment; and yet even then also the specification and the circumstances of time and place may be undetermined, and leave him in a capacity to comply for a time, and in a limited place.

§ 5. 4) It is required that the custom be of present observation, or else it does not oblige the conscience. Thus it is a custom of the catholic church that at the baptizing of infants there be god-fathers and god-mothers. This custom is still of use in the church of England: and although much of the reason for which they were first introduced is ceased, and the case altered; yet it is enough to every man that is a subject, that it is the custom: and therefore if any man shall dispute and prove that the thing itself is not now necessary, that is no warranty to him to omit it, so long as the custom is allowed and upheld, and is no evil. But if the custom be left in a church, that it was a catholic custom and of long use in the church is of no obligation to the conscience. Socrates[e] tells that *omnes ubique in orbe terrarum ecclesiæ*, 'all the churches in the world' every week upon saturday celebrate the mysteries: *Alexandrini tamen et Romani ex antiqua traditione istud facere renuunt;* 'but the churches of Alexandria and Rome refuse to do so, because they have an ancient tradition to the contrary.' And in this they had their liberty. It was a long and a general custom in the church upon all occasions and motions of solemnity or greater action to make the sign of the cross in the air, on the breast, or on the forehead: but he that in England should do so upon pretence because it was a catholic custom would be ridiculous. For a custom obliges by being a custom amongst them with whom we do converse, and to whom in charity and prudence we are to comply: and therefore to do an action that was a custom there where it is not a custom, must be done upon some other reason than because it is a custom; or else it is done because there is no reason. It was a custom of the catholic church to reserve infants all the year till Easter to be baptized, except it were in cases of necessity or great danger: but 'we have no such custom' now, 'nor the churches of God;' and therefore to think we are bound to comply with that or any such custom, is to make ourselves too fond admirers of the actions, and more than servants to the sentences and customs of ancient churches.

§ 6. 5) An ecclesiastical custom against an ecclesiastical law does not oblige the conscience. It does in many cases excuse, but when there is no scandal accidentally emerging, it never binds us to fol-

[e] Lib. v. hist., cap. 21. [al. 22. p. 295.]

low it. I say it can excuse from penalty, then when the ecclesiastical law hath been neglected, because the governors are presumed to do their duty; and therefore if they who made the law suffer it to be commonly broken, it is to be supposed they are willing the law should die: and this is the sense of that in the comedy,

Mores leges perduxerunt jam in potestatem suam[f].

Customs give limit to laws; and they bind according as the manners of men are. And this the lawyers extend even to a custom that is against the law of God[g]. So the presidents of Sena at the entry into their office take an oath in form that they will never receive bribes; and yet they do so, and are known to do so, and because of the general custom are never punished: and much of the same nature are the oaths taken at the matriculations and admissions into universities and offices respectively, concerning which it were very well there were some remedy or prevention. But if it can be understood that the lawgiver intends the law should be in force, and that the negligence of his ministers or the stubborn and uncomplying nature of the subjects is the cause of the want of discipline; then the conscience is obliged to the law, and not excused by the custom[h]. And yet further, when the law is called upon, then although there be a custom in the church against the canon, it neither preserves from sin nor rescues from punishment: *quia lex derogat consuetudini*, say the lawyers; when the law is alive the custom is dead, because the custom took its life from the diminution of the law; and when there is a law actually called upon, the custom to the contrary is a direct evil, and that against which the law is intended, and which the law did intend to remedy. The church hath made laws that no man shall fast upon the Lord's day, nor the great festivals of the year: if a custom of fasting upon Christmas day should in evil and peevish times prevail, and the law be unable or unwilling to chastise it, but suffer it to grow into evil manners; when the law is again warm and refreshed and calls for obedience, the contrary custom is not to be pretended against the law, but to be repented of. In the church of England there is a law, that when children are baptized they shall be dipped in the water; only if they be sick it shall be sufficient that it be sprinkled upon them: but yet the custom of sprinkling all does prevail. In this case we are to stand to the law, not to the custom, because the law is still in force, and is actually intended to prevail according to the mind of the church, and it is more agreeable with the practice, the laws and customs of the primitive church, and to the practice of Christ and His apostles. But of this I shall speak again in some of the following numbers.

[f] Plaut. Trinum. [act. iv. sc. 3. 30.]

[g] Baldus in l. 'Observare,' § 'Proficisci,' circa fin. ff. de officio proconsul. et leg. [§ 15. fol. 56 b. ed. fol. Lugd. 1562.]

[h] See the sixth rule of the last chapter of this book.

§ 7. 6) An ecclesiastical custom must be reasonable or useful, or it cannot oblige the conscience, except to avoid scandal, for that is in all things carefully to be observed, right or wrong, so it be not a sin against God; customs must be kept, when the breaking them is scandalous. But excepting this case, an unreasonable custom does not oblige. For no man is bound to be a fool, or to do a foolish action. Now a custom in the canon law is concluded to be reasonable if it tends to the good of the soul. In the civil law it is allowed to be reasonable if it tends to any public good. Thus it is a custom that judges should wear their robes upon their seats of judicature; that the clergy wear blacks. *Doctores portant varium, quia habitus virum ostendit,* saith the law, *l.* '*Stigmata,*' *C. de fabri.* And that priest were a strange peevish or a weak person who should choose to wear gray, because there is no religion in the colour; his religion in this would have nothing else: and though these things tend not to the good of the soul, yet they tend to the good of the public, they distinguish men, that honour may be given to them to whom honour belongs.

§ 8. For it is considerable, what the wiser lawyers say, *a*) that a custom is good if it contains *bonum honestum,* any honesty or matter of public reputation. Thus it is a custom that civil persons should not walk late in the night, but be in their houses at seasonable times; it is a good custom that bishops and priests abstain from going to taverns; this custom is reasonable, and therefore does oblige those that are concerned in it. *β*) A custom is good if it contains *bonum commune,* if it be for the common good: and of this sort there are many customs in every nation which are passed into laws, as that in the cause of dowries the judge should proceed summarily; that a fact be tried in the country where it was done; that when any man is accused he should have his accusers brought before his face. And thus also in the laws ecclesiastical there are very many of this nature; as that when bishops visit their churches there be allowance of procurations and synodals, and aptnesses for their entertainment; that when we see a bishop we beg his blessing; that when we come to a city we first go to the cathedral to pray, then to the bishop to be blessed and prayed for; that the contract of marriage be publicly solemnized in churches after three publications; that children ask their parents' benediction: these things are of public use, for the advancing of a necessary duty, for the mutual endearment of relatives, for the establishment of piety, for the conciliating authority, and to many other good purposes, which whosoever can advance by the keeping of a custom and complying with the manners of the church where he lives, is not to be excused if he will be stubborn and singular and proud. *γ*) Baldus[1] says, *Bona est consuetudo quæ continet bonum honorabile,* it is a good custom that gives honour and regard

[1] C. 'Si Judex laicus,' De sent. excommunicat., lib. 6. [in lib. sext. decret., lib. v. tit. 9. cap. 12.]

to whom it is due. Thus it is a custom that the consecration of bishops should be in public churches; that the degree of doctor, because it is an honour, be not conferred sneakingly and in conventicles. And upon this account, when any custom is honourable to religion or to a mystery, it is not to be omitted, because the custom is good, and in some proportions ministers to religion and its advantage.

§ 9. Thus the ministers of religion when they officiate are by an immemorial custom vested in albs or surplices; it was intended as an honour to the religion, because the white and the purple colours are the ensigns of civil and ecclesiastical dignity respectively, and are in honour to each other alternately indulged, and kings wear albs, and bishops and judges wear purple; and our blessed Saviour was pleased to call it the 'glory' of Solomon, when he was clothed in the purest linen of Egypt, whose whiteness, though very bright, yet it fell short of the natural whiteness of the lily. Glory is nothing but the excess and greatness of honour, and therefore these garments which were glorious upon Solomon, at least were given to the religious as ensigns of honour: the same which the epigram says of the purple mantle which was stolen from Crispinus[k],

Quisquis habes, humeris sua munera redde precamur:
Non hoc Crispinus te, sed abolla rogat.
Non quicunque capit saturatas murice vestes:
Nec nisi deliciis convenit iste color.

Such garments are not fit for every shoulder, they are marks of honour, and the delicacies of the greatest and the worthiest men. But that the white garment was given to religion, it had besides the honour to the persons, the signification and emblem of a precept[l]: it signified purity and truth, which in Philostratus in the image of Amphiaraus is said to be clothed with garments of snow, and covered with the purest whiteness; and Clemens Alexandrinus[m] writes that Cæus the sophister in the description of virtue and vice, described virtue in a white robe; and so does Themistius[n] invest truth, sitting upon an adamant, holding a bright splendour in her hand, and clothed with an alb. Concerning this S. Clement of Alexandria[o] spake much, even as much as the thing itself will bear: for it being nothing but the colour of a garment, is not to be proved to be necessary, and therefore not to be valued in such a quality: but yet neither is the custom of that colour to be despised, because that colour is a good emblem, and hath as much advantage as a colour can have; and therefore there can be no reason to despise the thing, or peevishly to go against the custom, where it is quitted from abuse.

[k] [Mart.] lib. viii. [epigr. 48.]

[l] Vide Lilium Giraldum, Syntag. 1. deorum, titulo de diis ex humanis actionibus: [tom. i. col. 30 A. fol. Lugd. 1696.] et Chartarium, lib. de deorum imaginibus. [p. 158. 4to. Mogunt. 1699.]

[m] Lib. ii. Pædag., cap. 10. [p. 236.]

[n] Orat. iii. sub finem. [lege orat. xxii. p. 281. ed. fol. Par. 1684.]

[o] Ubi supra, et lib. iii. cap. 11. [p. 286.]

But I shall add this to it, which is warranty enough for the church's choice, that the primitive Christians, who were free enough from any superstitious fancy concerning it, did nevertheless particularly affect and choose this colour. They saw that the saints in the Revelation had λευκὰ ἱμάτια, 'white garments,' and they were dipt in the blood of the lamb: and S. Anthony to represent himself a Christian did go in white, as S. Athanasius[p] tells of him. Eunapius[q] tells that the monks in Egypt went in black; and that many Christians that lived in other places did so too, for modesty's sake and gravity, in humility and abjection, who please may see demonstrated by many instances in Baronius[r]: and that is a good precedent to warrant the custom of the ordinary clergy habit. But yet it is evident that very many Christians were pleased rather to use the simple and native colour of truth, the emblem of purity; and Synesius[s] writing to one John the monk that chose to go in a black coat, writes that which is enough to be said in this whole affair: *Atqui nihilo deterius erat si candida foret: splendidissimæ quippe naturæ dicatum ac consecratum id potius fuerit quod in his quæ sensu percipiuntur purius atque lucidius est: sed si pullum ideo colorem probasti, quod id aliorum qui ante te usurparunt imitatione feceris, laudo quicquid Dei causa suscipitur:* 'but it had been no worse if you had chosen the white, as that which is agreeable to the nature of splendour and purity, and brighter and purer to the eyes: but if you chose the black garment because it was the custom of others that went before you, it is well; I commend any thing that is done for God, and for the cause of piety.' *Colorem album Deo maxime decorum,* said Cicero[t], *quod sit index puritatis et nitelæ, omnemque fucum excludat veritate nativa contentus*[u], 'the white garment is most comely for religion, as being content with its native simplicity, and an indication of brightness and purity.' Upon this account it is a custom of clothing the bodies of dead in white; 'for they that are dead are justified from sins,' and they are candidates of immortality. But it may be this was too much to be said of so small a thing[v]: I instanced in this, to shew that this colour was intended for an exterior honour to religion, and that is sufficient (say the lawyers) to make a custom reasonable; and if it be reasonable, it must be complied with.

§ 10. 7) A custom whose reason is not known, yet if it be of an immemorial time, and does transmit a right to ecclesiastical persons,

[p] [Vit. S. Anton., tom. i. p. 831 C.]

[q] Sub finem vitæ Ædesii. [p. 45.]

[r] An. Dom. LVII. [§ 92. tom. i. p. 473.]

[s] Epist. cxlvi. [interpr. Grodecio, p. 283.]

[t] Lib. ii. de legib. [cap. 18. ex Platon. de leg., lib. xii. p. 956 B.]

[u] [The latter clause of this sentence is not from Cicero.]

[v] Videat lector, si placet, Plutarchum, lib. de Iside, sub initium, [tom. vii. p. 389.] et 26. Rom. quæst. [tom. vii. p. 95, 6.] et Theodor. orat. 1. de provid. [tom. iv. p. 484.] et Eliam Cretensem in Nazian., orat. iv. in initio, [lege Nicet. in orat. xl. init. p. 616. ed. fol. Bas. 1571.] Arrianum, lib. iii. cap. 1. [?] et Philon. Jud., lib. de plantat. Noæ. [tom. iii. p. 134.]

is not without great reason and evident necessity or public utility to be refused. Thus it is a custom in the church of England that certain rights be paid to the rector of the church if the corpse be interred in the chancel: and though in some places this did run into great abuse, which was excellently reproved by that learned and good man Sir Henry Spelman, ὁ μακαρίτης, in his learned and pious tract *De sepultura;* yet the thing was not wholly to be blamed for the abuse sake, and the rights of any man are not easily to be snatched away because he cannot prove how he came by them, if he have had them long in possession: the thing was to have been reformed; but not after the new manner, that is, wholly taken away. *Consuetudo cujus initii memoria non sit in contrarium præsumitur rationabilis,* say Geminianus, cardinal Alexander, and Panormitan; and they instance in a prelate receiving money beyond his procurations in his visitation. For though the reason of it be not now known, yet it is presumed at first there was a reason; and though we have lost the record, yet he must not lose his right; unless that right of his be manifestly other men's wrong. But this instance is to be understood so, that the sepulture be first performed, and the charity and the ecclesiastical right be done to the dead; for these things cannot be contracted for; but when the piety is performed, the oblations of the faithful which at first were voluntary, and afterwards came into custom, and so transferred a right, may be received by the rector, but must not be detained by the heir. Here in Ireland there is a custom of receiving oblations at the baptism of infants; but if the priest refuses to baptize the child till he be secured of the money, he is a direct simoniac, for he contracts and takes a price for the sacrament: but if he confer the sacrament, to which he is tied by his charge and by the laws of God and man, then afterwards he hath a right to the oblation which by law or custom was to be given. But the office is to be done without it: for the infant hath a right to the sacrament before the priest hath a right to the offering; and that came in by the laws of God, this by the customs of men.

§ 11. 8) A custom ecclesiastical that is but of a legal and presumed reasonableness does oblige us to a conformity. I call that a legal or presumed reasonableness, when the law in certain cases does suppose it reasonable; and though it be not known to be naturally or precisely so, yet because it is not known to be unreasonable, but there is a probability to conjecture that it entered upon a right cause, it is permitted and allowed. This happens in two cases. The first is when a custom is besides the law, and not against it. For if it be against a law, it ought not to prevail at all, unless it be precisely reasonable, that is, unless the law in the changing of affairs or in itself at first be unreasonable; for in that case a custom that is naturally reasonable may be admitted, and if it be, must be observed. But if it be only besides the law, and not against it, then it is presumed to be reasonable, *hoc ipso quod introducta est,* say the

doctors, 'therefore because it is introduced:' and the reason is, because everything is presumed to be reasonable that is done generally, unless it be known to be unreasonable; and the very interests of peace and the reputation and honour of mankind require this, without any more enquiry: save only that this be added, that if the custom introduced besides law be either universal, or of an immemorial beginning, the law presumes the more strongly of the reasonableness of it, and therefore in these cases it ought to prevail the rather. For to this sense is that rule of S. Austin[x], *Illa quæ non scripta sed tradita custodimus, quæ quidem toto terrarum orbe observantur, datur intelligi vel ab ipsis apostolis, vel plenariis conciliis, quorum est in ecclesia saluberrima auctoritas, commendata atque statuta retineri,* 'those things which are delivered to us not by writing, but by tradition (or custom), which are observed in all the world, we understand them to be either retained by the appointment or commendation of the apostles, or some general councils, whose authority in the church is of great use:' that is, when the custom is universal and immemorial. For the first we presume it to be very reasonable, it could not else have easily prevailed upon the whole church: and for the second we suppose it to have had a very good beginning; for it adds moments to the custom, that when we know nothing to the contrary, we presume the best of its original. Not that we ought to conclude or to believe a custom to have come from the apostles, if it be universal or immemorial; but that we ought to regard and reverence it as if it did, because we know not in some cases whether it did or no. But if it be either one or other, it is sufficient to oblige us to retain it, or to comply with it so long as it is retained. Thus the solemn days of rogation which we observe in the church of England were not of an immemorial beginning; for they were first used by the bishops of Vienna, Mamertus, Isicius, and Avitus; but yet they were quickly universal, *non per Gallias tantummodo, sed pene per totum orbem,* not only in France, but in almost all the world, said Alcimus Avitus[y] in his time: and therefore this custom is not to be neglected by any single person, where the church still retains it; for this is sufficient to make a legal presumption of its reasonableness.

The other case is, that a custom is presumed reasonable when the nature of it is such that it can have no positive and natural unreasonableness, but is capable of some extrinsic and accidental decency and fittingness. The custom that is actually in the practice and manners of a church is presumed reasonable: and this is of use but in small matters, but yet such which little and great men sometimes make great matters of; I mean presidencies and priorities of place, sittings in the quire, precedencies in councils. Now in these cases custom ought to prevail, for where there is no reason in the thing,

[x] Epist. cxviii. [al. liv.] cap. i. [tom. ii. col. 124.]

[y] Homil. de rogat. [init. in max. bibl. vet. patr., tom. ix. p. 591 C.]

there custom is a reason sufficient; and if a law ought to prevail though there be no reason known for it, then so must custom, because this is esteemed as a law: *Capit. 'Consuetudo,' i. dist.*[z] *et l. 'De quibus,' ff. de legibus*[a]. And it is remarkable, that although in the introducing of a custom it concerns the governors of churches to take care that it be reasonable; yet when it is introduced that care is over, and then they are to take care to keep unity and to avoid scandal. *Præstat illic esse, ubi nihil licet quam ubi omnia*, said one, it is better to be under a tyranny than under an anarchy; it is better to be too much restrained than to be too loose: and if a custom hath seized upon us, it is better to stand still under that arrest, than to break the gentlest cords of a man, and enter into licentiousness. *Perniciosior temeritas quam quies.* It is not good to move any stirs in a quiet church, for certainly peace is better than that which is only a little better than a custom. And we see it by a sad experience, that those who are enemies and stubborn to the innocent customs of a church, intend nothing but to get the government into their own hands. *Genus hominum potentibus infidum, sperantibus fallax*, as Tacitus[b] said of the astrologers; we have too much reason to say of them, they are a sort of men that deceive their own confidents, and are no sure friends to their superiors: for to disavow customs is a great dishonour to the government, and a reproach to the ministry of laws; and to their disciples they preach liberty, that themselves only may rule them absolutely. *Quanto majore libertatis imagine teguntur, tanto eruptura ad infensius servitium;* Tacitus[c] said it of such persons: 'by the exempting fools from the just rule of their superiors, they make them their own slaves.' But to rebel against the customs of a church is an accusation not only of the rulers, but a condemnation of the whole society of the faithful.

§ 12. 9) A custom in the administration of a sacrament introduced against the analogy and mystery, the purpose and signification of it, ought not to be complied with. I instanced before in a custom of the church of England of sprinkling water upon infants in their baptism; and I promised to consider it again. *Baptizabant enim veteres, non manibus suis aquam baptizando aspergentes, sed trina immersione hoc evangelii sequentes, Ascendit ex aqua, ergo descenderat. Ecce immersio, non aspersio;* said Jeremy the patriarch of Constantinople[d]. 'Straightway Jesus went up out of the water,' saith the gospel: 'He came up, therefore He went down. Behold an immersion, not an aspersion.' And the ancient churches following this of the gospel, did not in their baptisms sprinkle water with their hands, but immerged the catechumen, or the infant. And therefore we find in the records of the church, that the persons to be baptized were quite

[z] [Gratian. decret., part. 1. dist. i. cap. 5. col. 8.]
[a] [Digest., lib. i. tit. 3. l. 32.]
[b] [Hist., lib. i. cap. 22.]
[c] [Annal., lib. i. cap. ult.]
[d] Resp. ii. cap. 4. [inter acta et scripta theolog. Wirtemb. et Hierem. Constant., p. 238. fol. Witeb. 1584.]

naked; as is to be seen in many places, particularly in the mystagogic catechism of S. Cyril of Jerusalem[e]: and S. Dionys[f] describes the ritual in the same manner. "The bishop puts his hand upon the catechumen's head, and giving a sign to the priests, commands that they write the name of the catechumen and of his god-father; which being written he says the office or prayers, which when the whole church hath performed together with him, he devests him of his garments by the ministers." And the same thing out of the same author is observed by Elias Cretensis[g] in his notes upon the fourth oration of S. Gregory Nazianzen, and is reported also by S. Ambrose in his tenth sermon[h], *Nudi in sæculo nascimur, nudi etiam accedimus ad lavacrum,* 'we are born naked, and naked we enter into the waters of baptism.' All which are a perfect conviction that the custom of the ancient churches was not sprinkling, but immersion, in pursuance of the sense of the word in the commandment, and the example of our blessed Saviour. Now this was of so sacred account in their esteem, that they did not account it lawful to receive him into the clergy who had been only sprinkled in his baptism; as we learn from the epistle of Cornelius to Fabius of Antioch[i], μὴ ἐξὸν ἦν τὸν ἐπὶ κλίνῃ διὰ νόσον περιχυθέντα ὥσπερ καὶ οὗτος εἰς κλῆρόν τινα γενέσθαι, 'it is not lawful that he who was sprinkled in his bed by reason of sickness should be admitted into holy orders.' Nay it went further than this, they were not sure that they were rightly christened, yea or no, who were only sprinkled; as appears in the same epistle of Cornelius in Eusebius[k], εἴγε χρὴ λέγειν τὸν τοιοῦτον εἰληφέναι, which Nicephorus thus renders, 'if at least such a sprinkling may be called baptism:' and this was not only spoken in diminution of Novatus and indignation against his person, for it was a formal and a solemn question made by Magnus to S. Cyprian[l], *an habendi sint Christiani legitimi, eo quod aqua salutari non loti sunt, sed perfusi,* 'whether they are to be esteemed right Christians who were only sprinkled with water, and not washed or dipped.' He answers, that the baptism was good when it is done *necessitate cogente, et Deo indulgentiam suam largiente,* 'in the case of necessity, God pardoning and necessity compelling.' And this is the sense and law of the church of England; not that it be indifferent, but that all infants be dipped, except in the case of sickness, and then sprinkling is permitted. And of this sprinkling, besides what is implied in the former testimonies, there was some little use in the primitive church. *Quis enim tibi tam infidæ pœnitentiæ viro asperginem unam cujuslibet aquæ commodabit?* says Tertullian[m] speaking to an impenitent person: 'who will afford thee so much as one

[e] [§ 2. p. 311.]
[f] Lib. de eccl. hierarch., cap. de baptismo. [cap. 2. § 5, 6. tom. i. p. 253.]
[g] [See p. 365 above.]
[h] [Pseud-Ambros., tom. ii. append. col. 403.]
[i] Apud Euseb., lib. vi. c. 43. [p. 314.]
[k] [p. 313.]
[l] Epist. lxxvi. [al. epist. lxix. pp. 185, 6.]
[m] De pœnit., cap. vi. [p. 124 C.]

single sprinkling of water?' meaning, for his baptism. And Surius in the life of S. Laurence[n] tells that as he was going to his martyrdom, one Romanus a soldier brought to him a pitcher of water that he might be baptized of him as he went; which in that case must needs be done by pouring water upon him. *Fudit aquam super caput ejus:* so did S. Laurence also to Lucillus, 'he poured water upon his head.' And Walafridus Strabo[o] from these very examples concludes that in cases of necessity it is lawful to use sprinkling. He adds also, that it is lawful to do it when there is a great multitude of persons at once to be baptized: and Aquinas supposes the apostles did so when the three thousand and when the five thousand were at once converted and baptized. But this is but a conjecture, and hath no tradition and no record to warrant it: and therefore although in cases of need and charity the church of England does not want some good examples in the best times to countenance that permission, yet we are to follow her command, because that command is not only according to the meaning and intent of the word βαπτίζετε in the commandment, but agrees with the mystery of the sacrament itself; for "we are buried with Him in baptism," saith the apostle. *In aqua tanquam in sepulchro caput immergentibus vetus homo sepelitur et submergitur, deinde nobis emergentibus novus resurgit inde:* so S. Chrysostom[p], 'the old man is buried and drowned in the immersion under water, and when the baptized person is lifted up from the water, it represents the resurrection of the new man to newness of life.' In this case therefore the contrary custom not only being against an ecclesiastical law, but against the analogy and mysterious signification of the sacrament, is not to be complied with, unless in such cases that can be of themselves sufficient to justify a liberty in a ritual and ceremony; that is, a case of necessity.

§ 13. And of the same consideration is it, that the baptism be performed with a trine immersion, and not with one only. In England we have a custom of sprinkling, and that but once. To the sprinkling I have already spoke; but as to the number, though the church of England hath made no law, and therefore the custom of doing it once is the more indifferent and at liberty, yet if the trine immersion be agreeable to the analogy of the mystery, and the other be not, the custom ought not to prevail, and is not to be complied with, if the case be evident or declared. Now in this particular the sense of antiquity is clear. *Nam nec semel, sed ter ad singula nomina in personas singulas tingimur,* saith Tertullian[q]: *Dehinc ter mergitamur*[r], 'we are thrice put under water,' not once; at the mention of every Person we are dipped. The very same words we read in S.

[n] [In August. 10. tom. iv. pp. 586, 8.]

[o] De rebus eccles., cap. 26. [Max. bibl. vet. patr., tom. xv. p. 197.]

[p] In illud iii. Johan. 'Nisi quis renatus', &c. [hom. xxv. tom. viii. p. 146 C.]

[q] Adv. Praxeam, cap. xxvii. [p. 516 B.]

[r] De corona milit. [cap. iii. p. 102 A.]

Hierome against the Luciferians[s]. But more largely it is explicated by S. Ambrose[t], "Thou wert asked, Dost thou believe in God the Father almighty? and thou didst say, I do believe: and thou wert plunged, that is, buried. Thou wert asked again, Dost thou believe in our Lord Jesus Christ? and thou saidst, I do believe: and thou wert dipped or plunged; and therefore thou art buried together with Christ. The third time thou wert asked, Dost thou believe in the Holy Spirit? and thou saidst, I do believe: and the third time thou wert plunged; that thy three-fold confession might wash away the many lapses of thy former life." S. Denys[u] says that the trine immersion signifies the divine essence and beatitude of God in a Trinity of persons. S. Athanasius[x] says it signifies 'the death, burial, and resurrection of our blessed Saviour, together with His being three days in the grave.' And this thing was so the practice and custom of the church, that in the canons of the apostles[y] (as they are called) he that does not use trine immersion is to be deposed from his dignity. Τὴν μίαν ἐπιφημίζειν κατάδυσιν ἀσεβές ἐστιν, 'it is impious and ungodly to immerge but once in baptism:' so Zonaras[z] upon that canon: and S. Chrysostom[a] derives it from Christ's institution, *Omnibus mysteriis velut signum imponens Dominus, in tribus mersionibus aquæ unum baptisma discipulis suis tradidit,* 'our Lord did as it were impose a sign upon every mystery, and delivered one baptism to His disciples in three immersions or dippings:' and therefore says, that though this descended by tradition, yet it hath the authority of a law. And the same thing we find affirmed by pope Pelagius, as he is cited by Gratian *de consecrat., dist.* 4[b]. And Theodoret[c] speaking of the heretic Eunomius, who first of all without authority and against reason did use but single immersion, he says that he subverted the rite of holy baptism which at first was delivered by our Lord and His apostles.

§ 14. Now in these particulars it is evident that the ancient churches did otherwise than we do: but that is not sufficient to force us to break the ecclesiastical custom which is of long abode with us. But when they say, these things are to be done by divine precept, we are to consider that upon its own account: and though some of the fathers did say so, yet it can never be proved to be so; and it were strange that there should be a divine commandment of which there is no mention made in the four gospels, nor in the acts or epistles of the apostles. But then that there is in dipping, and

[s] [tom. iv. part. 2. col. 297.]
[t] De sacram., lib. ii. cap. 7. [tom. ii. col. 359.]
[u] [De eccles. hierarch., cap. ii. § 7. tom. i. p. 254.]
[x] In dictis et interpret. script., qu. 92. [tom. ii. p. 327.] Vide August., homil. iii. apud Gratian. de consecr., dist. iv. cap. 78. [col. 2187.]
[y] Can. 49. [al. 41. Coteler. patr. apost., tom. i. p. 449.]
[z] [Apud Bevereg. synodic., tom. i. p. 33.]
[a] [Hom. de fide, tom. ix. p. 855.]
[b] [cap. 82. decret. part. 3. col. 2189.]
[c] Lib. iv. hæret. fabul. [cap. 3. tom. iv. p. 356.]

in the repetition of it, more correspondency to the analogy and mystery of the sacrament, is evident; the one being a sacrament of the death and burial of Christ, the other a confession of and an admission to the faith and profession of God in the most holy Trinity: and therefore I say, it is sufficient warrant that every single person break that custom of sprinkling which is against the ecclesiastical law; and it is also a sufficient reason to move the church to introduce a contrary custom to the other of single immersion, concerning which as yet there is no law. But because there is even in sprinkling something of the analogy of the mystery, as is rightly observed by Aquinas and Dominicus à Soto: and because it is not certain that the best representation and the most expressive ceremony is required; therefore the church upon great cause may lawfully do either: but because it is better to use dipping, and it is more agreeable to the mystery to use it three times, and that so the ancient church understood it, therefore these things are a sufficient warrant to acquit us from the obligation of the contrary custom; because a custom against which there is so much probability, and in which there is no necessity and no advantage, is to be presumed unreasonable.

§ 15. But if the custom of single immersion should by some new-arising necessity become reasonable, then it not only might be retained, but ought to be complied with. Thus it happened in Spain in the year DC. the Arian bishops finding their advantage in the readily-prepared custom of trine immersion, used it and expounded it to signify the substantial difference of the Son and the Holy Ghost from the Father. Upon this Leander the bishop of Seville gives advice and notice to S. Gregory bishop of Rome; who commends Leander for using a single immersion, which he did to signify the unity of nature in the divinity, and that he might not comply with the Arians: and this was afterwards brought into custom, and then into a law by the fourth council of Toledo[a]. But unless such an accident happen, and that the reason be changed, every church is to use her first customs, those which be right and agreeable to the sense and purpose of the sacrament. But otherwise an evil custom is better broken than kept.

RULE XVI.

THE DECREES AND CANONS OF THE BISHOPS OF ROME OBLIGE THE CONSCIENCE OF NONE BUT HIS OWN SUBJECTS.

§ 1. THIS must needs follow from divers of the former discourses: for if bishops in their spiritual capacity have no power of making

[a] Can. 5, alias 6. [tom. iii. col. 581.]

laws of external regiment without the leave of their princes, or the consent of their people, then supposing the pope's great pretence were true, that he is the head or chief of the ecclesiastical order, that from him they receive immediately all the spiritual power they have, yet this will afford him no more than what Christ left to the whole order; of which I have already given accounts.

§ 2. But in this there will be the less need of enquiry, for since the bishop of Rome by arts which all the world knows had raised an intolerable empire, he used it as violently as he got it, and made his little finger heavier than all the loins of princes: and in the council of Trent, when in the twenty-fifth session[e] the fathers confirmed and commanded the observation of all canons, general councils, apostolical ordinances made in favour of ecclesiastical persons and ecclesiastical liberty, they at once by establishing the pope's empire, destroyed it quite, for they made it impossible to obey, and the consciences of people were set at liberty, because they were commanded every man to bear a steeple upon his back. For first there were an infinite number of apostolical ordinances, saith cardinal Cusanus[f], which were never received even when they were made. Then let it be considered what there is to be done to Gratian's *decretum*, which is made part of the pope's law: and who knows in that *concordantia discordantiarum*, that contradictory heap of sayings, which shall and which shall not oblige the conscience? But then the decretals of Gregory the ninth and of Boniface the eighth, the Clementines and Extravagants, all those laws in that book which is called *Collectio diversarum constitutionum et literarum Romanorum pontificum*, and in another called *Epistolæ decretales summorum pontificum* in three volumes, and in another called *Eclogæ bullarum et motuum proprio-rum*, and in another called *Summa pontificum*, and in the seventh book of the decretals not long since composed, and in their rules of chancery, their penitentiary taxes, and some other books of such loads as these that I need not add to this intolerable heap: but that a christian bishop should impose, and a council of christian bishops and priests should tie upon the consciences of men such burdens which they can never reckon, never tell over, never know, never understand; and that they should do it then when a christian emperor had given advice that the decrees and canons should be reduced to a less number, and made to conform to the laws of God, is so sad a story, so unlike the spirit of Christ and to government apostolical, that it represents the happiness of christendom that they are not obliged to such laws, and the unhappiness that would be upon them if the pope had the rule and real obligations of the consciences of christendom.

§ 3. But of these things the world hath been long full of complaint; as appears in the writings of the cardinal of Cusa[g], in Mar-

[e] Cap. 20. [tom. x, col. 189.] [p. 724.]
[f] [De concord. cathol.] lib. ii. c. 11. [g] [ubi supra.]

silius of Padua[h], in Aventinus[i], in Albericus Rosate[j], in Gregory Hambourg[k], in Matthew of Paris[l], Matthew of Westminster[m], Nicolaus de Clemangiis[n], Franciscus Duarenus[o], the cardinal of Cambray[p], and many others both collected by Goldastus, and the *Catalogus testium veritatis* by Illyricus. Insomuch that if the people had not been ignorant and superstitious, *qui facilius vatibus quam ducibus parent suis*, and 'more willing to obey their priests than their princes,' and if the princes had not been by such means overpowered, these decrees and canons would have been as easily rejected as many others have been. For if by the papal sanction they do oblige the conscience, then they all oblige. If they all oblige, how comes it to pass that, as Cusanus says, infinite numbers of them are rejected when they are newly made? And if so many of them may be rejected, then which of them shall oblige? If they oblige by the authority of the pope, that is alike in them all: if by the condition of the matter, then they bind as they agree with our duty to God and to princes, with the public good, and the edification of the church; and then the authority itself is nothing.

§ 4. And it is no trifling consideration that the body of the canon law was made by the worst and the most ambitious popes. Alexander the third, who made Gratian's decree to become law, was a schismatical pope, an anti-pope, and unduly elected. The rest were Gregory the ninth, Boniface the eighth, Clement the fifth, John the twenty-second, persons bloody and ambitious, traitors to their princes, and butchers of christendom by the sad wars they raised, and therefore their laws were likely to be the productions of violence and war, not of a just and peaceable authority.

§ 5. But to come nearer to the point of conscience; who made the bishop of Rome to be the ecclesiastical lawgiver to christendom? For every bishop hath from Christ equal power, and there is no dif-

[h] In defens. pacis, part. ii. c. 23. [s. p. 4to. Bas. 1522.]

[i] Lib. vii. annal. Boiorum. [cap. 4. p. 639.]

[j] In l. 'Bene a Zenone,' c. de quadrien. præscript. [in cod. Justin., lib. vii. tit. 37. l. 3.]

[k] In confut. primat. papæ, consid. 2. princip. [In fascic. rer. expetend. per Orth. Grat., tom. ii. p. 121.]

[l] In Henrico III. [A.D. MCCXLV. p. 698 sqq. ed. fol. Lond. 1640.]

[m] In parte 2. A.D. MCCXLVII. [p. 333. ed. fol. Franc. 1601.]

[n] Lib. de ruina et reparat. eccles. [e. g. cap. 4.—In concil. Constant. per Herm. von der Hardt, tom. i. col. 7.]

[o] In præfat. libri de sacris ecclesiæ ministeriis, impress. 1551. [tom. ii. p. 347. opp. fol. Aurel. Allobr. 1608.]

[p] Alliacens. de reformat. eccles., consid. 2. [In fascic. rer. expet. &c., tom. i. p. 409.]—See also the 'Verger's dream,' made in Latin in the time of Charles the fifth, and translated into French. [The 'Songe du vergier, du clerc et du chevalier,' was written about A. D. 1373, whether originally in French or Latin remains in uncertainty. It has been variously attributed to Jean de Vertus, Charles de Louvier, Raoul de Presle, and Philippe de Mayzieres. The first printed edition is in fol. Lugd. 1491. litt. goth. The Latin version (Aureus libellus de utraque potestate, Somnium viridarii vulgariter nuncupatus, &c.) was first printed in 4to. Par. 1516: it is also contained in the collection of Goldast under the pseudonym of Philotheus Achillinus (Monarch. S. Rom. imp., tom. i. p. 58.)]

ference but what is introduced by men, that is, by laws positive, by consent, or by violence. *Ad Trinitatis instar, cujus una est atque individua potestas, unum est per diversos antistites sacerdotium,* said pope Symmachus[q]: 'as is the power of the holy Trinity, one and undivided; so is the episcopacy divided amongst all the bishops, but the power is the same.' So S. Cyprian[r], *Una est ecclesia per totum mundum in multa membra divisa: item episcopatus unus, episcoporum multorum concordi numerositate diffusus;* 'as there is but one church in the whole world divided into many members, so there is but one bishopric parted into an agreeing number of bishops.' And again[s], 'Let no man deceive the brotherhood with a lie, let no man corrupt the truth of faith with a perfidious prevarication:' *episcopatus unus est, cujus a singulis in solidum pars tenetur,* 'there is but one bishopric, and every one of us hath his share: a part of the flock is given to every pastor.' Now if one were the universal bishop over all, then these zealous words of S. Cyprian had not been reconcilable to truth and sense: for then the unity of the church had been by a unity of subordination, not by an identity of office and a partition of charge. To the same purpose is that of pope Damasus[t], writing to the African bishops to require their aid in a matter of discipline. *Nos excusare non possumus, si ejus ecclesiam quæ nobis generaliter commissa est in quantum prævalemus puram a tam illicitis superstitionibus non custodiamus; quia non aliter unus grex et unus pastor sumus, nisi quemadmodum apostolus docet, Id ipsum dicamus omnes, &c.,* 'the church is committed to us in common, and we have no other way of being one flock and one shepherd, but by speaking the same things;' that is, consenting and joining in the common government. This is the same which S. Hierome[u] affirmed, *Omnis episcopus, sive Romæ fuerit, sive Eugubii, sive Constantinopoli, sive Rhegii, sive Alexandriæ, sive Tanis, ejusdem est meriti, ejusdem sacerdotii:* 'it is all one, there is no difference in worthiness and power, whether he be bishop of Rome or Eugubium, Constantinople or Rhegium, Tanais or Alexandria.' For as it was with the apostles, so with their successors; *Hoc utique erant cæteri apostoli quod erat Petrus, pari consortio præditi et honoris et potestatis*[x], 'what Peter was, that the rest of the apostles were; he was the vicar of Christ on earth, and so were they, and so are their successors.' *Caput enim ecclesiæ Christus est, Christi autem vicarii sacerdotes sunt*[y]; . . *qui vice Christi legatione funguntur in ecclesia,* said pope Hormisda[z]: and S. Cyprian[a] calls the bishop *unum ad tempus vice Christi judi-*

[q] Baron. A.D. ccccxcix. n. 86. [tom. vi. p. 541.]
[r] Lib. iv. epist. 2. [al. epist. lv. p. 112.]
[s] [De unit. eccles., p. 108.]
[t] Epist. v. [inter concill. ed. reg., tom. iii. p. 290.]
[u] [Epist. ci. tom. iv. part. 2. col. 803.]
[x] Cyprian. de unit. eccles. [p. 107.]
[y] [Hormisd. epist. xxv. § 1. inter concill., ed. reg., tom. x. p. 489.]
[z] [Audite me pro Christo legatione fungentem.—Id. epist. vi. p. 442.]
[a] Vide S. Cypian., l. i. ep. 3. [al. epist. lix. p. 129.] et lib. v. ep. 6. [al. epist. xxxiii. p. 66.]—S. Ambrose in 1 Cor. xi. [tom. ii. append. col. 148.]

cem, 'the deputy and vicegerent of Christ.' S. Peter had the keys given him, so had the apostles, and so have their successors; S. Peter was the pillar of the church, and so were the other apostles; he was a foundation, and so were they; for 'Christ hath built His church upon the foundation of the apostles and prophets.' He was Πέτρος, and every one of them was πέτρα, a 'rock,' and Christ was the 'corner-stone.' And what they were in their perpetual office, that the bishops are. *Antistitem puriorem cæteris esse oportet, ipsius enim (Christi) personam habere videtur; est enim vicarius ejus, ut quod cæteris licet, illi non liceat, quia necesse habeat quotidie Christi vicem agere,* said S. Austin[c]: 'a bishop ought to be more holy than others, because he hath the person of Christ; he is His vicar, what is lawful to others is not lawful for him, for he every day is in his place or stead.' Add to this, that the power which the bishops have, they have it immediately from Christ, they are successors of the apostles, of all, not of Peter only, many apostolical churches which were established by others being succeeded in as well as Rome; that these things are evident in matter of fact, and universally affirmed in antiquity clearly and without dispute.

§ 6. From hence it must needs follow that by the law of Christ one bishop is not superior to another. Concerning which I need no other testimony than that excellent saying of S. Cyprian in the council of Carthage[d], 'It remains,' saith he, 'that we all speak what every one of us does think, judging no man, and refusing to communicate with no man that shall happen to be of a differing judgment.' *Neque enim quisquam nostrum se episcopum episcoporum constituit, aut tyrannico terrore ad obsequendi necessitatem collegas suos adegit; quando habeat omnis episcopus pro licentia libertatis et potestatis suæ arbitrium proprium, tanquam judicari ab alio non possit, cum nec ipse possit alterum judicare: sed exspectemus universi judicium Domini nostri Jesu Christi, qui unus et solus habet potestatem et præponendi nos in ecclesiæ suæ gubernatione, et de actu nostro judicandi;* 'for none of us makes himself a bishop of bishops, or by tyrannical terror compels his colleagues to a necessity of complying: for every bishop hath a liberty and power of his own arbitrement, neither can he be judged by any one, nor himself judge any other; but we all must expect the judgment of our Lord Jesus Christ, who by Himself and alone hath power of setting us over the government of His church, and of judging us for what we do.' Now if all bishops be equal in their power, then the pope can by the laws of Christ make laws no more than any bishop can; and what the legislative of the bishop is, I have already declared and proved: and therefore for these and infinite other reasons the consciences of Christians may be at peace as to the canons of the popes, out of his temporal jurisdiction. Con-

[c] In quæst. vet. et N. Test. q. ult. [quæst. 127. tom. iii. append. col. 142 E.] et ad fratres in eremo, serm. 37. [tom. vi. append. col. 344.]

[d] [p. 229.]

cerning which other reasons who please to require them may find enough in Spalatensis[e], in the replies of our English prelates in the questions of supremacy and allegiance, in Chamier, Moulin, Gerard, and divers others. I have the less need to insist upon any more particulars, because I write in a church where this question is well understood, and sufficiently determined to all effects of conscience. I only add the saying of Æneas Sylvius[f] who was himself a pope, *Ante concilium Nicænum quisque sibi vivebat, et ad Romanam ecclesiam parvus habebatur respectus,* 'before the Nicene council every man lived to himself,' (that is, by his proper measures, the limits of his own church,) 'and little regard was had to the church of Rome.'

SECT. IV.—OF THE MATTER AND CONDITIONS OF ECCLESIASTICAL LAWS REQUIRED TO THE OBLIGATION OF CONSCIENCE.

RULE XVII.

ECCLESIASTICAL LAWS THAT ARE MERELY SUCH CANNOT BE UNIVERSAL AND PERPETUAL.

§ 1. I DO not mean only that ecclesiastical laws can be abrogated by an authority as great as that which made them; for all positive laws both of God and man can be so, and yet there are some of both which have been obligatory to all men under such a government, and during such a period, that have been called perpetual and for ever. But that which is here intended is of greater consequence and concern to the conscience, and it is this, that ecclesiastical laws merely such, that is, those which do not involve a divine law within their matter, must be so made as that they do not infringe christian liberty; and secondly, that they be so enjoined, that 'the commandments of men' be not 'taught for doctrines[g].' These are very material considerations, but of great difficulty; and therefore it is fit they be most seriously considered.

§ 2. They must be imposed so as to leave our liberty unharmed; that is, that the law be not universal, not with an intent to oblige all christendom, except they will be obliged, that is, do consent. For laws are in public as actions in particular; actions are done by single men, and laws are made by limited communities. A society cannot be said to do an action, and the whole world cannot be said to make a law; but as the action is done by a determined person, so the law is made by a determined government, as by the church of England,

[e] Lib. ii. capp. 1, 5, 6. [tom. i. pp. 160, 243 sqq.]

[f] Epist. 288. [p. 802 D.]

[g] [Matt. xv. 9; Mark vii. 7.]

of Rome, of Milan; and the catholic church never yet did meet since the apostles' days in any assembly to make a law that shall bind all Christians whether they consent or no. And because one church hath not by any word of Christ authority over another church, and one king is not superior to another king, but all are supreme in their own dominions, of which the church is at least a part, and if they be all christian, it is that church, that christian dominion; it must necessarily follow that no ecclesiastical law can be made with a power of passing necessary obligation upon all Christians. And therefore the code of the catholic church was nothing but a collection of some private constitutions which were consented to by many churches, and to which they bound themselves, but did not long stand so, but changed them more or less according as they pleased. And when the Roman emperors made any canon ecclesiastical into a law, it was a part of the civil law, and by that authority did oblige as other civil laws did, not all the world, but only the Roman world, the subjects of that dominion.

§ 3. But when any law or canon ecclesiastical is made, it is made by a certain number of ecclesiastics, or by all. If by all, then all consent first or last, and then every bishop may govern his charge by that measure; but that was never yet reduced to practice, and prevails only by consent: but if by a certain number only, then they can but by that measure rule their own subjects; but if they obtrude it upon others, then comes in the precept of the apostle, "Stand fast in the liberty with which Christ hath made you free, and be not again entangled in the yoke of bondage[h]."

§ 4. For when Christ had made us free from the law of ceremonies which God appointed to that nation, and to which all other nations were bound if they came into that communion; it would be intolerable that the churches, who rejoiced in their freedom from that yoke which God had imposed, should submit themselves to a yoke of ordinances which men should make: for though before they could not, yet now they may exercise communion and use the same religion without communicating in rites and ordinances.

§ 5. This does no way concern the subjects of any government (what liberty they are to retain and use I shall discourse in the following numbers), but it concerns distinct churches under distinct governments, and it means, as appears plainly by the context and the whole analogy of the thing, that the christian churches must suffer no man to put a law upon them who is not their governor. If he have undertaken a pious discipline, let him propound it, and for God's glory and the zeal of souls endeavour to persuade it; for all that is not against christian liberty, until any man or any church shall impose it and command it, whether the churches please or no, whether they judge it expedient or no, whether it be for their edifi-

[h] [Gal. v. 1.]

cation or not for their edification: that's not to be suffered; it is against our evangelical liberty and the apostolical injunction.

§ 6. And this was so well understood by the primitive churches, that though the bishops did appoint temporary and occasional fasts in their churches upon emergent and great accidents, as Tertullian affirms, yet they would suffer no bishop to impose any law of fasting upon others, but all churches would keep their own liberty, as I have already proved in this chapter[i]: and when Montanus did *νηστείας νομοθετεῖν*, make a law of fasting, not for his own church, but intended that all Christians should keep the fasts appointed, they made an outcry against him and would not endure it; and yet he did it only for discipline, not for doctrine, for piety, not as of necessity, as appears in Tertullian's book 'of fasting,' in the first and second chapters[k]: and they also did keep fasting-days set and solemn, every bishop in his own church, at what times they would, but almost all upon Good-friday; but this was by consent and with liberty, and that they ought to defend, and so they did.

But ecclesiastical laws must not be perpetual.

§ 7. That is, when they are made they are relative to time and place, to persons and occasions, subject to all changes, fitted for use and the advantage of churches, ministering to edification, and complying with charity. Now whatsoever is made with these conditions, cannot be perpetual: and whatsoever ecclesiastical law hath not these conditions, the churches ought not to receive, because they are impediments, not advantages to the service of God. If they be thus qualified, no good man will refuse them; if they be not, they are the laws of tyrants, not of spiritual fathers: for this whole affair is fully stated in those words of our blessed Saviour; reproving of the pharisees and their ecclesiastical laws, He says, they 'by their traditions did evacuate the commandment of God, and they taught for doctrines the commandments of men.' The full sense of which when we understand, we have the full measure of ecclesiastical laws, not only as they relate to the churches and communities of Christians under distinct governments, but to every single Christian under his own governor and superior. These I say are the negative measures: that is, ecclesiastical laws are not good and are not binding if they be imposed against the interest of a divine commandment, or if they be taught as doctrines. Of the first there is no doubt, and in it there is no difficulty: but in the latter there is a very great one.

§ 8. For when our superiors impose a law of discipline, they say it is good, it is pleasing to God, it is a good instrument and ministry to some virtue, or at least it is an act of obedience; and that it is so is true doctrine: what hurt can there be in all this? The com-

[i] Rule 13, § 9. [p. 343.]
[k] [p. 544 sqq.] vide etiam capp. xiii. et xv. pp. 551, 2.]

mandments of men are bound upon us by the commandment of God, and therefore when they are once imposed, they cease to be indifferent, and therefore may then become διδαχαὶ, 'doctrines' and points of religion; what then is that which our blessed Saviour reproves? and what is our negative measure of ecclesiastical laws?

§ 9. To this the answer is best given by a narrative of what the pharisees did, and was reproved: for all was not repugnant to the law of God, neither is all that amiss which men teach to be done. For our blessed Saviour commanded us to hear them that sat in Moses' chair, and to do whatsoever they commanded: not absolutely whatsoever, but whatsoever of a certain sort; that is, α) whatsoever they taught by a probable interpretation of what was doubtful, β) or by faithful counsel concerning things belonging to piety and charity, γ) or by a determining to circumstances of time and place those things which were left to their choice and conduct.

§ 10. Whatsoever was besides these, that is, α) whatsoever had its foundation in the opinions of men, and not in something certainly derived from God, if brought into religion, and imposed on men's consciences as a part of the service of God, this is the 'teaching for doctrines the commandments of men.' But besides this, β) if what is deduced only by probable interpretation be obtruded as a matter of faith; or γ) if what is piously counselled be turned into a perpetual and absolute law; or δ) if that which was left to the choice and conduct of the governors be handled not as matter of liberty, but of necessity; in all these cases the commandments of men are taught for doctrines.

§ 11. The reason of these things is plain. For the first, if it have no foundation in the law of God, but in human opinions, and yet be taught for doctrine, it is literally the thing that is here reproved. For the second, whatsoever is but probably collected is not the word of God, for that is always certain: it is true it is not probable in itself, but in itself is true or false; but to him it is but probable, and therefore to say this is the word or the commandment of God, is more than the man can say; it is to say that it is true in itself, that is, it is a doctrine of God, when indeed it is but the word of man for aught we know. For the third, when God hath left it at liberty, if man turns it into a commandment, and teaches it for the law of God, he does more than God would do, and more than is true; for God never made it into a law, and man cannot make it to become God's law: for the ecclesiastic order being but God's minister and the publisher of God's will, must propose things as they received them from God; that which is law as necessary, that which is counsel as highly rewardable. For the fourth, if it be left in the power of the governors, then it is *hoc ipso* evident that it is not necessary, and therefore though it may minister to order and discipline, yet it must do no more: it may be called obedience, so long as it is justly bound upon us with the 'cords of a man;' but it must not in any

other sense nor at any time be called religion. How these two last sorts may be made into laws I shall account when I speak of the positive measures of ecclesiastical laws; but abstracting from that superinduced obligation, to teach these things as necessary which God hath not made so, is to do as the pharisees did, whom our blessed Saviour so reproves.

§ 12. An example of the first is the pharisees' teaching the washing of cups and dishes, because they said that if a gentile or any unclean person had touched their vessel that touched their meat, the impurity would go into their body that eat it, and from thence into their soul; and therefore they taught the doctrine or tradition of cleansing vessels and washing their hands,

εὑρίσκοντες κενὸν τὸ φάρμακον
πρὸς τὸ κενὸν,

as he said in the Greek comedy; finding out a vain remedy to cure a fantastical disease. Thus in the church of Rome they exorcise salt and water to cast out devils; they give verses out of the psalms or gospels to charm witches; they ring the bells to appease tempests, and very many more such ridiculous devices. β) Of the second we have examples enough in the council of Trent, who drew into a body of articles, and declared those things, some of which are but probable at most, and some of them apparently false, to be articles of faith: and under this those also must needs be involved who persecute men for opinions and doubtful disputations. γ) Of the third, they are very evil examples who to some whole orders of men lay an injunction of keeping evangelical counsels: such who forbid the whole order of the superior clergy to marry, and command them that are married to forsake their wives, or their office and livelihood. δ) But they are guilty of the fourth kind of prevaricating of the words of our blessed Saviour, who persecute the breakers of an ecclesiastical law with a severity greater than the violators of a divine commandment. For if there be any liberty of any sort left after an indifferent action is made into a law of man, it is all destroyed by them who give less liberty to the transgression of that law than to the breach of God's law, under which there is left no liberty but the liberty of a cheerful and voluntary obedience. For they that do such things must needs at least say that such human injunctions are as necessary as the divine commandments; for else why are they more severely punished?

§ 13. The sum is this,—Not only those who expressly teach that what they have invented is a commandment of God, but all they that say any thing is a law of God which is not, though it be good, though it be probable, and all they which use arts and secret devices and little arguments and enforcements, and press indifferent things up to the height and necessity of religion and a divine commandment, are guilty of this pharisaism, obnoxious to our Saviour's reproof, and if

it be in the matter of ecclesiastical laws, have exceeded their measures and their power, and bind themselves, but not the consciences of their subjects. A commandment is not only then broken when we bid open defiance to it, but then also when we do actions unlike the virtue of it, and actions tending to the violation of it; that is, there are degrees of violation of a divine law: and an ecclesiastical law that does in any degree break this law of our blessed Saviour is therefore void, and is become intolerable.

§ 14. Of these things I shall yet give two great examples, one of the pharisees, and another of some that follow their example in this affair. God gave a commandment to the Jews of keeping holy the sabbath day, their new moons and some other solemnities. Now there were many particulars in the observation which were not determined in the law; but 1) what was doubtful was to be expounded by their doctors. 2) Some things were left to the liberty of good people, and the measure of them was best determined by their doctors and men learned in the law. 3) There were some canons ecclesiastical which were outer guards and hedges to the law itself, that men might by those distances be kept further off from sin; and in these things their rulers also had power. Now though all this they could do, and might pretend an authority from God to interpret the law and to guide the consciences, yet when they fell into ridiculous commentaries and useless glosses, neither the law itself about which their interpretations were employed, nor their authority which they had from God, could secure them from tyranny, and corruption, and doing violence to conscience, and imposing unequal burdens. "Thus we find that their rabbins taught that upon a solemn feast day it was not lawful to catch fish in their ponds, but they might hunt the hens and catch the geese in their yard. They might not blow the fire with a pair of bellows, because that was too like the labour of smiths; but they might blow it through a hollow cane. They might make a fire and set on their pot, but they must not lay on their wood like the structure of a house, that is, too artificially; and you must roast or boil no more than was necessary: and if you made a fire, you might wash your feet with warm water, but not your whole body. You must not touch an egg that was laid that day; nay if you were doubtful whether it were laid that day or no, yet you might not eat it, and if that were mingled with a thousand, you might touch none of them: but if you killed a hen, you might eat the perfect eggs that you found in her." These and many more such little doctrines they taught to be observed, as explications and manners of the observation of the divine commandment: but these I have here transcribed from the Jews' books[m], that we may perceive the sense of our blessed Saviour's reproof by the instances of their prevarication. He was pleased to

[m] [For these and similar particulars see the rabbinical tract Tosaphta Betza from the Gemara Hierosol.,—Ugolin. thesaur. antiq. sacr., tom. xvii. p. 1106 sqq.]

speak to that of washing of cups and platters: but it is also said there[n], καὶ ἄλλα πολλά ἐστιν, 'there are many other things,' such as that was which they have received and teach, some of which I have recited. Now we do not find that the pharisees taught these as divine commandments, but they used them as if they were; they did them ὁσίας χάριν, they thought themselves the more holy for doing them, they accounted them profane that did not, they placed much of their religion and pharisaism or separation in them, esteeming them a part of the divine worship: this was their case, and Christ gave their sentence.

§ 15. The other instance which I promised is the law of the Roman church in keeping of Lent; which it is certain was no law of Christ, not so much as the interpretation of a divine law. Some of them pretend it was enjoined by the apostles; others of them say not, and these say true; so that it is a commandment of men: but yet this they teach for doctrine in the culpable and criminal sense, that is,

§ 16. 1) They value it more than some commandments of God. I need no other proof but the words of Erasmus[o], *Veluti parricida, pene dixerim, rapitur ad supplicium, qui pro piscium carnibus gustarit carnes suillas*, 'he that instead of fish shall but taste a piece of pork is dragged to punishment almost as if he were a parricide.' *Gustavit aliquis carnes, clamant omnes, O cœlum! O terra! O maria Neptuni*[p]*! Nutat ecclesiæ status, &c.*; 'if they see a man eat flesh, they are amazed, they think the church is in danger;' they put men to death, to the sharpest death of burning alive, for eating flesh; they shut up the butchers' shambles, but leave open the public stews.

§ 17. 2) They account it to be a part of the service of God, not only as it is an act of obedience to superiors, but in itself and without any relative consideration. Bellarmine[q] says, 'they are not Christians that eat flesh in Lent:' which words are extremely false, or else every one that disobeys an ecclesiastical law hath forfeited his christendom; or else he places the sum and life of religion in the keeping of Lent, and makes it a vital part, expressly prevaricating one of the most glorious propositions of christianity, placing the kingdom of God in meat and drink, not in 'righteousness, peace, and joy in the Holy Ghost[r];' and doing that which the apostle hath forbidden, when he said to the Colossians[s], 'Let no man judge you in meat and drink.' If it were only a question of obedience to the law, it were to be considered upon a distinct account, and were a sin or duty respectively according to the several dispositions of the person and the law: but no man says that he is no Christian who at any time breaks any ec-

[n] [Mark vii. 4.]
[o] Epist. ad episc. Basil. [de esu carnium, tom. ix. col. 1202 B.]
[p] [Verba ex Terent. Adelph., 794.]
[q] Lib. ii. de bonis operib., c. 9. § 'Tertio addit.' [tom. iv. col. 1437 D.]
[r] [Rom. xiv. 17.]
[s] [Coloss. ii. 16.]

clesiastical law; and therefore in this more is pretended, and it is to be reckoned amongst the διδασκαλίαι, ἐντάλματα ἀνθρώπων, 'the commandments of men that are taught for doctrines.'

§ 18. 3) They account the exterior action, the body of the injunction, the element of it, to be a service of God; and for that part of it esteem themselves the more holy and the better Christians, as appears in their contentions about it, using arguments to prove the very fast to be a sacrifice, a pure oblation[t]. Now it is true that fasting is a good ministry to divers holy purposes, but it is no more; it is that which can be supplied by other ministries as apt, and therefore that in kind is not necessary, nor required; it is that whose work can be done without any ministry at all in some persons and some cases, even by love and by obedience, by hope and fear, which are of themselves direct graces, virtues, and parts of the service of God. And therefore the fathers of the church press in their sermons and exhortations to fasting, that they would take care to acquire the end of fasting, to be free from vice, to mortify the affections and lusts; according to that saying of Isidore[u], "Fastings with good works are acceptable to God; but he that abstains from meat, and does evil, imitates the devils, *quibus esca non est, et nequitia semper est,* they never eat, but ever do wickedly and perversely; but he fasts well that fasts from maliciousness and secular ambitions." "Take heed therefore," says S. Hierome to Celantia[v], "that when you begin to fast and use abstinence, you do not think yourself holy: for this strength *adjumentum est non perfectio sanctitatis,* it is not the perfection of sanctity, but a help only." Νηστείας ὄφελος οὐδὲν ἂν μὴ καὶ τὰ λοιπὰ ἕπηται πάντα, 'and there is no profit at all of fasting, unless all things else do follow,' saith S. Chrysostom[x]; that is, ἀποχὴ ἁμαρτημάτων, 'an abstinence from sin entirely:' and again, 'What gain is it if ἔρημοι κατορθωμάτων, 'being void and empty of good works,' we have kept the fast? If therefore another says, I have fasted all the Lent, say thou, I had an enemy, but I am reconciled; I had an evil custom of detracting from my neighbour's fame, but I have left it off; I had an ungodly custom of swearing, but it is now amended.'

The sum is this, which I represent in the words of Prosper[y], *Jejunia, abstinentiæ, ac cætera hujusmodi, . . non pro justitia, sed cum justitia Deo sunt exhibenda,* 'abstinence and fastings are not to be given to God for good works, but with them.' That is, they are of use in order to certain purposes, which when they do effect they are good, when they do not, they are useless troubles; and if they then be urged beyond their ministry, and instrumentality, and for themselves, then we return to the beggarly elements and rudi-

[t] Bellarm. ubi supra, c. 11. § 'Item.' [col. 1444 A.]

[u] Lib. ii. senten., cap. 44. [§ 8. tom. vi. p. 256.]

[v] Epist. xiv. [al. cix. tom. iv. part. 2. col. 818.]

[x] Homil. iii. ad pop. Antioch. [tom. ii. p. 41.] et hom. iv. [p. 58.] et hom. xvi. [p. 169.]

[y] Lib. iii. de vita contemplat., cap. 10. [Max. bibl. vet. patr., tom. viii. p. 74 G.]

ments of the Synagogue: and if we suffer ourselves to be brought under the power of these things by laws and affrightments and spiritual terrors, then we have lost our christian liberty which was bought by the best blood of the world.

§ 19. 4) But not only the exterior and instrumental act is absolutely urged and taught as necessary, but a circumstance, a manner and form of that exterior instrument is enjoined. It is enjoined not that we fast totally; but that we fast so: you may dine if you will eat at the merchant's hours, after twelve or one of the clock, but you may not eat flesh; you may eat sweetmeats, the most delicious fish, the sturgeon and the *scarus*, the lamprey and the oyster, the eel and the salmon, and all the delicacies of nature, so you do not touch the fillets of a veal, nor eat an egg or milk, curds or cheese, or any thing that comes from a beast or bird. Now what can be the meaning of this, when it comes to be expounded by wise and sober men that can judge of the causes and differences of things? For if abstinence and fasting be the thing that is required, this is nothing of it: if we may dine, if we may fill our bellies with wine and delicacies, if we may eat, and as Adam might, of all the garden of Eden, it is no great matter as to temperance and abstinence, as to mortification and austerities, if we abstain from one; it may be something as to our health, and so certainly it is to very many bodies. It may be an instrument of vexation, but it cannot edify. Is any man cured of his lust by eating nothing but fish and broths for forty days? He may indeed be made sick by it, and so very many are, but the interest of no virtue is served by it, but by the other permissions it may be more destroyed; and by fishes and broths and artificial meats provisions may be too abundantly made 'for the flesh to fulfil the lusts thereof.' What therefore is in this manner of the law, but something of the beggarly religion of meats and drinks? In the days of Prosper[z] they abstained from the flesh of beasts, but not of birds; and his sentence of that kind of fasting is this:—"But they that abstaining from the flesh of four-footed beasts, enjoy the flesh of pheasants and other precious birds or fishes, seem to me not to cut off the delights of their bodies, but to change them; and to cast away the common and cheap delicacies of flesh, that they may fill their pleasures with more delicious and more precious flesh; not for abstinence, but because some flesh is unclean, or rather, as I suppose, for the tenderness of their wanton stomachs: since the nature of any flesh is not to be condemned, if it be intended for man's use and appointed by God; but the lusts of the flesh are to be avoided, which the devil hath superinduced and offers to our senses. But they that would seem to themselves more abstinent, and by it acquire fame and noises, do so abstain from flesh, that they fill their vast appetite with rare fruits and curious broths: but spiritual abstinence persuades not to refrain the use of

[z] Lib. iii. de vit. contempl., cap. 28. [ibid. p. 68 H.]

certain meats, but the restraint of the lust and the desire; and they are rather to be esteemed abstinent, who forbid not to themselves the use of some meats, but the delights of the body." And indeed let it be considered; if a man pretending to mortify his body shall abstain from wine, and will nevertheless drink sherbets and delicious beverages, strong ale and spirits, I suppose his body will not by that discipline be dead to sin: and so it is in the abstinence from flesh, unless he also abstain from all nourishment but what is necessary and made pleasant by want. For thus the holy primitives when they had gotten the custom of the Lenten fast, for two days, or six days, or ten days, or fifteen days, according as the humour increased, they did generally abstain from flesh; but so they did also from fish, and wine, and all delicacies, and eat a dry diet, bread and water, herbs and common fruits, turnips and berries, flies and nuts: and yet this they did without making it a religion not to eat a bit of flesh; but upon occasion would eat a meal of flesh, but not very delicious; and when their fasts were of many days, they were not continual but intermitted. This latter I have already proved; but that even in Lent the primitive Christians did not abhor flesh, appears beyond dispute in the case of Spyridion bishop of Cyprus, who when a traveller came to him in the time of Lent very weary and faint, and there was no cold provisions in the house ready dressed, it being a time of fasting, bids his daughter to boil some pork which was in the house powdered for the use of the family: she did so, and her father the bishop eat of it, and bade his guest do so too; who refused, saying that he was a Christian. The bishop replied, therefore the rather you ought not to refuse; because the word of God hath said, 'To the pure all things are clean.' So Sozomen[a] tells the story. By which it is apparent, that then it was not the custom for Christians to eat flesh in Lent, for they eat nothing that was pleasant, but they abstained because it was pleasant, not because it was flesh; for of this they made no religion, as appears in the fact and exhortation and argument of Spyridion. And of the same consideration was that law of Justinian, in whose time, which was in the middle of the sixth age, the custom of abstaining from flesh in Lent did prevail much; but because it happened in Constantinople to be great scarcity of other provisions, the emperor commanded the shambles to be open and flesh to be publicly sold. But Nicephorus[b] tells that the people would not buy any, for they began to think it to be religion 'not to touch, not to taste, not to handle.' But the emperor and the wise men knew no religion against it. And that which Marcian said to Avitus[c] in the like case is very considerable, 'We know that charity is better than fasting; for charity is a work of the divine law,' νηστεία δὲ τῆς ἡμῶν ἐξουσίας, 'but fasting is a thing arbitrary and of our own choice.' Since therefore to eat flesh or not to eat it

[a] Lib. i. hist. cap. 11. [ad fin.]
[b] Hist. eccles., lib. xvii. [cap. 32.]
[c] Theodoret. hist. relig., in Marciano. [cap. iii. tom. iii. p. 1145.]

may become good or bad as it is used, and does not serve the end of fasting, and such fasting does not serve the end of the Spirit, not only to make fasting to be religion, to which it does but minister, but to call that fasting which they who first began Lent would call feasting and luxury, and to make that to be essential to that fast, and that fast necessary to salvation in the ordinary way of necessity, is not only to teach for doctrine the commandments of men, but to make the impotent, fantastic, and unreasonable devices of men to become commandments.

§ 20. 5) That this may be an exact parallel with the practice of the pharisees in that folly which our blessed Saviour reproved, the commandment does so little regard the true end of fasting, and that fasting so little advance the use and interest of any virtue, that they spend themselves even in the circumstances of some circumstances, and little devices of superstition; taking care not to eat a turnip if boiled in a vessel in which flesh was put, not to cut their bread with a knife that had carved flesh, not to taste it, but to wash their mouth after a little whey or broth, if by chance it hath been touched: which things because they can serve no end of religion, the law that requires such things must needs be foolish or superstitious; it must either play with men's consciences as with a tennis-ball, or intimate some pollution and unholiness at that time to be in the flesh, or else at least must pretend to greater strictness than God does in the observation of His positive laws; and it certainly introduces the greatest tyranny in the world, destroys peace, and is the most unwarrantable of all the follies which can be incident to the wiser part of mankind, I mean to them that govern others.

§ 21. I will not instance in the ridiculous and superstitious questions which they make about the keeping of this ecclesiastical law; as whether it be a dinner or a supper if we eat after even-song said at high noon; whether a morning's draught does break the ecclesiastical fast; whether a man may eat a bit of bread with his drink, and yet be a good son of the church; whether a cook that dresses meat for sick persons may lawfully lick his fingers; whether he that eats one bit of flesh sins anew if he eats another; and whether or no he may not at the same rate eat flesh all the Lent after; whether the wet nurse may eat flesh, because her baby may have good milk; whether it be lawful to eat birds and fowls, because they were produced out of the water: which doughty reason did encourage some to do it, of whom Socrates[d] speaks, and is mentioned by Peter Comestor[e] the master of the scholastical history. Which questions, if they that make them be in their wits, and think other men are so too, they must needs believe that the keeping of Lent is so sacred, so principal a point of religion, so great a service of God in the very letter and body, in the crust and outside of it, that the observation of it must consist in a mathematical point: it is like the decalogue,

[d] Lib. v. hist. cap. 21. [al. cap. 22. p. 295.]

[e] [In Gen. cap. 7.]

the very letters of which are numbered; and if a hair be missing, religion suffers diminution: and which of all these it be, yet in every one of them they do what the pharisees did, and what Christ reproved in them, and therefore forbids in all men, they 'teach for doctrines the commandments of men.'

§ 22. 6) To return to the particular of the rule, they make an ecclesiastical law, which is of a relative use and nature, to be periodical and perpetual, which is unreasonable, and may be sometimes unjust, and very often uncharitable, and therefore not the fit matter of an ecclesiastical law. For this is certainly the greatest deletery of the liberty of christian churches, and a snare to consciences, and is of itself apt to introduce superstition and the opinion of direct religion into the discipline.

§ 23. But this is to be understood of such laws which are intended for discipline, and are 1) a burden, and 2) of a nature relative to the future, and 3) of an alterable use. For if a law were made that every man at a certain time of the year should do a certain discipline to mortify his lust, it were a foolish law; for the man at that time, it may be, needs it not, or he hath another remedy, or he is sufficiently contrite for his sins, and does his penance by internal sorrow, or it may be he cannot at that time mourn, or it may be the cause is altered, or a greater cause intervenes, and that ought to be served, and therefore not this, for if you serve both you tire obedience, and make religion to be a burden: but which is most of all, a law of burden if it be perpetual makes the willing to be slaves, and tempts the unwilling to be rebels; and because it is intended to minister to things contingent and infinitely alterable, if the law be not so too, it must pass into an opinion of being a divine worship and religion, or else into more than an opinion and imagination of tyranny. Add to this, that laws of burden are always against charity, if they be not done in great necessity, or not effective of a good greater than the evil; and therefore to impose such laws with a perpetual obligation upon churches, when it cannot be of perpetual use, and at all times good, or just at such times necessary, is against the equity and charity of that power which Christ entrusted in the hands of them whom He made stewards of His household, feeders of His flock, and fathers of His family.

§ 24. But if the laws be relative to what is past, and no burden, but matter of ease or benefit, or comes from a perpetual cause, or that which is unalterable, then the law may be such which will be perpetually consented to and kept for ever. Thus the catholic church keeps the Lord's day, not by an everlasting ordinance, but by a perpetual consent, and for a never-failing reason; and that which makes it necessary now to keep that day, and will do so for ever, is because the reason of it is always the same; and in this case that which was fit at first, will be so at last, and all the way: and things are in that constitution and conjunction, that no man can despise that day with-

out being careless to return thanks for the resurrection of Christ, and to separate a just portion of his time to the more solemn service of God. But for all this, this is not a perpetual law imposed upon all churches; for God did not impose it, and no man hath power to do it: for no man's power can last longer than his life; and therefore no bishop can oblige his successors by any canon, without the civil power supervenes and fixes that law by continuation. And therefore although God did enjoin the Jews an annual fast for ever, and although the rulers of the Jews did add some more, and they were observed for ever: yet this will not infer that therefore now this may be done in a law of the church. For God who is a lawgiver does abide for ever, and therefore His laws are to remain as long as He please: and the rulers of the Jews had both the powers, civil and ecclesiastical, conjunct, and they by a current legislation still caused their fasts to be observed; but yet the succeeding ages had been at liberty, and the Sanhedrim might have changed those solemn days, but that they were established by prophets and by those whom they believed to speak the will of God: all which make their case special, and not to be drawn into example and warranty in the sanction of ecclesiastical laws in the christian church. To which let this be added, that the Jews might keep and observe a religion of days and meats, and it not being against the analogy of their manner of serving God, their rulers had an equal power to make laws in the difference of days and meats, as in any other matter whatsoever. But the laws of the church must minister to piety and holiness, and to nothing else; and they must be exacted with prudence and charity, and in no other manner; and they must be obeyed in love and liberty, and by no other measures: but the day or the meat must ever be the less principal in the constitution; they may be the circumstances, but no part of the religion, and therefore cannot be perpetual, but just as a Venice glass may, that is, if there be nothing to break it, it may abide for many ages, but every thing that strikes it can break the glass: and every requisite of reason or charity can put a period, or take off the necessity of that portion in the law, which because it must be less principally regarded, must accordingly be imposed and exacted, but cannot be universal and perpetual.

§ 25. The result of these considerations is this;

1) Ecclesiastical laws may be made by particular churches to prevail in their own governments, and to pass on their own subjects, but may not by one church be imposed upon another, much less from one to pass upon all.

§ 26. 2) Ecclesiastical laws may be made and continued by any authority so long as that power lasts, and so long as the reason of the law does last: but it can be no longer a law than it hath influence from the remaining power, who is to establish it according to the remaining usefulness.

§ 27. 3) All ecclesiastical laws in the matter of meats and drinks

and days must be wholly relative to religion, and the effect of graces and proper duties, and must not at all be imposed with any regard to themselves, but to the ends of their ministry, and must live and die according to the nature of relative beings: but cannot be perpetual, but where neither the cause nor the subject alters.

§ 28. 4) All ecclesiastical laws must be imposed with liberty: not with liberty of the subjects to obey or not to obey, but with the liberty of the whole church to change them or to continue them, to exact or to relax them, to bind or to loose, as may best stand with prudence and charity, with the interests of virtue or the good of the subject.

§ 29. 5) Ecclesiastical laws must serve religion, but must never pretend to be religion or a direct service of God. It is true that all religious laws of our just superiors rightly imposed in order to any virtue are adopted into the society of that virtue; as a law of fasting does also enjoin a duty of temperance; a law of christian festivity, in order to our joy in God, and praising His name, and paying Him thanks, promotes all these graces, and therefore he that keeps that day to these purposes, besides his obedience, does an act of all those graces. Yet it is to be observed that the observation of these laws can never formally be reckoned to be actions of those graces; they are but ministries and instruments, and they not necessary, but useful only: and therefore he that does not observe that day, though it may be he sins against obedience, yet he is not to be judged as if he were intemperate, or unthankful, or unmindful of God's benefits; because though these appointments are made for the services of these graces, yet these are not the adequate ministries of them; they may be done by other ways at other times, and they may at that time be omitted without any neglect of such graces. If there be a just cause to omit the observation, then the omission is neither disobedience, nor intemperance, nor unthankfulness: but if there be no just cause, it is disobedience; and may be any of the other as it happens, but is not certainly so. But though in these respects to obey an ecclesiastical law may be a doing an act of virtue together with the obedience, and so a serving of God; yet because it is only in regard of the concomitant act of virtue, which is served by the law, if that law do not serve that virtue, but by any cause be destitute of its purpose, that external action which the law enjoins is so far from being a service of God, that if it be urged imperiously, or acted for itself, and delighted in upon the natural account, it enters into religion, with which it hath nothing to do, and so passes into superstition.

§ 30. 6) Ecclesiastical laws if by any means they be taught for doctrines and commandments of God, they become unlawful in the imposition, though the actions of themselves be lawful; that is, they are unlawful laws, and do not bind the conscience, for they are such things in which no man can have authority, for they are a direct de-

struction to christian liberty, which no man ought to take from us. If they once pretend to a necessity besides the equal necessity of obedience, they do not oblige the subjects of any government; but if they pretend to a necessity of obedience, they do not oblige any churches besides that whose governors have made the law.

RULE XVIII.

ECCLESIASTICAL LAWS OF CEREMONIES AND CIRCUMSTANCES OF EXTERNAL OBSERVANCES DO NOT BIND THE CONSCIENCE BEYOND THE CASES OF CONTEMPT AND SCANDAL.

§ 1. THAT is, they bind only in public, and not in private; they bind not for any thing that is in themselves, but for something that is better than themselves; they bind, not for our own sakes, but for their sakes that look on: and therefore when nobody looks on, when they have no end to serve, when they do no good, when they signify nothing, they cannot bind at all; for whatsoever binds only for this reason, does not bind at all when this reason is not. The church of England commands that when the priest says the responsory after the creed at morning or evening prayer, he shall stand up: the purpose of it is, that the people who are concerned to answer may the better hear: but if the prayers be said in private, none being by, or it may be two or three that kneel near him, it is ridiculous to suppose that the priest sins if he kneels on to the end of those ejaculations. In some cases he that officiates is bound to turn his face to the west, or to the body of the church; but if there be nobody in the church, but the clerk at his side, why he should do so there is no reason to be given, and therefore it cannot be supposed to be bound upon him by the law of the church.

§ 2. For it is highly considerable, that in these laws of ceremonies it is otherwise than in laws which concern the matter and instances of divine commandments. Because the laws of commonwealths can change actions of themselves indifferent into the order of virtue and vice, if they be of the same matter and naturally capable: as when incest is defined to be a forbidden conjunction of persons too near in blood, the law by forbidding the marriage of uncle and niece for that reason can make that to be incest, and killing can by the law be made murder when it is forbidden, or not to be murder when it is justly commanded. Thus if there be a law made that corn or gold lace shall be sold at a certain price, the law which is the measure of justice in contracts makes that price to be the instance of justice, and what exceeds it to be unjust, if it be a just law. Because these actions lying next to the instances of the divine commandment, and placed there as outer guards to God's law, and being naturally the same actions, when the prohibition comes from a just authority, then

it is made to be a sin by the law, and that sin by the nature and participation of the same reason. For he that kills his adulterous daughter where it is permitted, does do the natural act of killing as much as he that kills his father; but where there is no law against it, but by law she is sentenced to death, and that without solemnities, there is no *ἀνομία*, and therefore no *ἁμαρτία*· it is not a sin unless it be the transgression of a law. So that the natural capacity and the supervening law together make up the action to be such a sin. But now this thing can never be in ecclesiastical laws of ceremonies and rules of order: for they are not in their matter and in their own nature like to religion or next to it; and nothing can be religion but that service which God hath chosen of Himself, and that which is naturally and internally so, as glorification of God, loving Him, obeying Him, praying to Him, believing Him, and such other inward actions which are taught to us by our natural reason and our prime notices of God. But external actions and ministries are then capable of being made religion when God appoints them, and not else, because God will be worshipped externally as He is pleased to appoint, according to that saying of Origen[f], *Nemo qui oculis animæ cernit, alio modo Deum colit quam sicut ipse docuit*, 'that man is blind in his reason, that will worship God otherwise than He himself hath taught.'

§ 3. This only, first, the church can adopt actions into religion which God hath made ready, and which He hath prepared and fitted for religion; such as are free-will-offerings and counsels evangelical: for when any man does choose to do any act which God hath recommended and not enjoined, this is religion; but this is only in such things which are real graces appointed by the divine law, and the instance only is left undetermined: and how far the church can command any of these things I shall afterwards enquire; but for the present these things can pass into religion, because God hath so prepared them.

§ 4. But secondly, external observances can become religion if they be the outward act of an inward grace; as giving money to the poor, worshipping God with the body; that is, when they naturally express what is conceived and acted within, not when they come from without: a commandment of man may make these actions to be obedience, but they are made religion by the grace within, or not at all. Thus fasting can be an act of religion, when it is naturally consequent to penitential sorrow, and the hatred of sin: but when it is enjoined by men, then it is but an instrument, and may be separate from all religion, and may be no act of repentance, and can be made to be religion by no man but by the nature of the thing.

§ 5. But thirdly, ceremonies and rituals, and gestures and manners of doing outward actions cannot be made to be any thing but

[f] Contra Celsum; lib. vii. [tom. i. p. 731 E.]

obedience: they are neither fitted by God, as counsels evangelical are, nor yet by nature, as the outward actions of virtue are, to become religion; nay they are separated from being religion by the word of God, by the coming of Christ, by His death upon the cross; and days and meats and drinks[s], and carnal purities, and external observances are now both by God and by nature removed far from being any thing of the christian, that is, of the spiritual religion.

§ 6. The consequent of these things is this; when a law is made, it binds either by the natural goodness of the thing, or by the order and usefulness of its ministry to something else, or only by the authority. Ceremonies cannot be of the first sort, but of the second they may, and then they oblige only so long as they can minister to the end of their designation, but no longer. For if that be the only reason of their obliging, then they oblige not when that reason is away. Now because they are only made for order and decency, both which are relative terms, and suppose an action done in public, there is no need, no use of them in private. But because even after the reason ceases the authority hath reasons of its own to be regarded, and things that are not binding by their absolute or relative nature, may yet bind by the authority and for the reverence of that, till there be opportunity to annul the law, therefore when the reason of the ceremony does cease, or is useless and operates not at all, we must yet regard the authority, that is, do it honour, as Samuel did to Saul. If the thing itself be of an intrinsic goodness, though made necessary only by the positive command, then it is to be done for itself, and in private as well as public: but if it be only a relative ministry, then it hath no reason beyond that relation; and if that relation be public, it binds only in public: but if it be only matter of obedience, and have no reason else either absolute or relative, then the law does not bind the conscience, but even then we are bound so to comport ourselves that the authority may not be despised nor offended; that is, she is not to be slighted or reproached, nor publicly disregarded; though for the obedience itself in this case there is no absolute obligation, but the not-obeying is to be conducted humbly, inoffensively, prudently and regardfully. The reason of these things is this, because the church makes no absolute laws; she makes them for good ends, and beyond that she hath no authority: her legislative is wholly a ministry of grace and godliness, not of empire and dominion. For the difference is this, civil laws oblige in public and in private, for reason and for empire, when the cause ceases and when it remains, when the breach is scandalous and when it is not scandalous: but the canons of the church oblige only for their reason and religion, for edification and for charity, when the thing is useful to others or good in itself; but the authority itself being wholly for these purposes, is a ministry of religion, but hath in it nothing of empire, and therefore does not oblige for itself

[s] [Col. ii. 16.]

and by itself, but for the doing good, and for the avoiding evil: and this is that which is meant by the cases of contempt and scandal.

These are the negative measures of ecclesiastical laws. The positive measures are these.

RULE XIX.

ECCLESIASTICAL LAWS MUST BE CHARITABLE AND EASY, AND WHEN THEY ARE NOT, THEY OBLIGE NOT.

§ 1. When ecclesiastical laws were conducted and made by the spiritual power, the bishops, rulers of churches, before the civil power was christian, their laws were either commandments of essential duty, or of that which was next to it and necessary for it, or else they were indicted to a voluntary people, and therefore to be presumed easy and gentle, charitable and useful, or it is not to be thought the people would have been willing long to bear them. But when the civil power was the ecclesiastical ruler, and the commonwealth became a church, the spiritual sword was put into a temporal scabbard, and the canons ecclesiastical became civil laws, though in their matter religious, and in their original they were ecclesiastical. Now if the laws be established by the civil power, they must indeed be just and good; but yet if they be laws of burden, and contain a load that is supportable, they are to be obeyed. *Quod quidem perquam durum est, sed ita lex scripta est,* said Ulpian[h], 'the case is hard, but so the law is written:' meaning that though it be hard, yet the law is to be obeyed so long as it is just. But when the ecclesiastical law is indicted by the spiritual power, the civil power only consenting and establishing the indicted canon, that corroboration adds no other band to the canon than that it be obeyed according to the intention of the spiritual power, only so it becomes a law indeed, but it is a law only as the church can intend a law, or desire it to be imposed; that is, what the church might reasonably persuade, and fitly enjoin, that so much and no more, in that manner and no other, the civil power does corroborate it. For the ecclesiastical canon put into the hands of the civil power and made into a law, is like the twig of an apple-tree grafted into the stock of a thorn; it changes not the nature of it, but is still an apple: so is the canon, still it is but an injunction of the church, though the church be enabled temporally to chastise the rebellious; but still the twig that is so engrafted must retain its own nature, and must be no sourer than if it grew upon its own stock; it must be such as

[h] L. 'Prospexit,' Qui et a quibus. [Digest., lib. xl. tit. 9. l. 12. § 1.]

is fit to be persuaded, such which men can be willing to, and easy under, and of which they shall have no cause to complain: for since the church in these things hath no power but to exhort and to persuade, and therefore can enjoin nothing but what can be reasonably persuaded; she must not by the aid of the temporal power enjoin those things which are cruel and vexatious, and such to which no argument but fear can make the subject willing. The church when she hath temporal possessions, always is a good landlady, and when she makes judgments she meddles not with blood, but gives the gentlest sentences, and when she is admitted to a legislative, she enjoins a ζύγος χρηστὸς, 'an easy, a gentle yoke,' and when she does not, the subject is concerned to avoid the temporal evil threatened by the civil power; but not to give obedience to the intolerable law of the church, as in that capacity: for unless the law of the church be such that good men may willingly obey it, it cannot be enjoined by the church, and the church ought not to desire the civil power to do it for her. For since she hath no power to command in such things where the divine authority does not intervene, all the rest is but persuasion; and he that hath power only to persuade, cannot be supposed to persuade against our will: and therefore matters of intolerable burden are not the matter of ecclesiastical laws, because they certainly are against the will of all men, who can serve God and go to heaven without them.

§ 2. Not that it is permitted to any man as he please to obey or not to obey the ecclesiastical laws; nor that the spiritual authority so depends upon the consent of every subject, that he is at his choice whether he will keep it or no: but that he is to obey willingly; that is, that no more be imposed than what he may be willing to, and then that he be not disobedient, when if he were not peevish, he ought to be willing. For this is all that share of christian liberty which under his just superiors every single subject can enjoy; he may not break the law when he please, but when he cannot keep it; not when he is not in the humour, but when he is not in capacity; not because he will, but because without great evil he cannot.

§ 3. I shall give an instance in the ecclesiastical laws of fasting, and by an enquiry into their obligation state the sense and intention of this rule.

WHAT PERSONS ARE TIED TO THE OBSERVATION OF ECCLESIASTICAL FASTS, AND IN WHAT CASES.

§ 4. To the solution of which question, first we are to consider to what end the church enjoins her fast. For whoever is involved in that end is also concerned in the law, ordinarily and regularly. Thus if a fast be only indicted to suppress incontinence, they who have no temptation to it, or have a sufficient remedy by which they please God, are not bound by that law, but in the cases of scandal and

contempt. 'Fasting-spittle kills a serpent,' says Pierius[i]; but if a man have a rod in his hand that will do it sooner, that law would be fantastical that should command him to stay till he could kill the snake with his fasting-spittle. But if the church intends many good ends in the canon, any one is sufficient to tie the law upon the conscience, because for that one good end it can be serviceable to the soul: and indeed fasting is of that nature that it can be a ministry of repentance by the affliction, and it can be a help to prayer, by taking off the loads of flesh and a full stomach, and it can be aptly ministerial to contemplation; and if fasting were only for mortification of lustful appetites, then a virgin might not safely fast in public, lest she fall into the suspicion of incontinence, or be exposed to the bolder solicitations of the young men. Now because every one is concerned in some one or more of these ends of fasting, all people are included within the circles of the law, unless by some other means they be exempted.

§ 5. But they are exempted from it who are sick and weak, spent with labour, or apt to be made sick, or hindered in their employment: *Nisi quem infirmitas impedierit*, says the canon law[k]; all are bound to keep fasting days 'but such who are hindered by infirmity,'

——— seu
Dura valetudo inciderit, seu tarda senectus[l];

any bodily infirmity, whether of age or sickness, weakness or disease. Concerning which, if the infirmity be evident, there is no question, for the law does except such persons in the very sanction, or public and authentic interpretations, and common usages. Women with child, children and old persons, the sick and the traveller, the weary and the weak, the hard student and the hard labourer, the poor man and the beggar, these are persons which need not ask leave, for the law intends not to bind them. Now those that are but probably so, that is, not well, apt to be sick, suspected with child, not very weary, these also are within the power of having leave given them, that is, capable of dispensation; that is, it may be declared that the law intends not to bind them at all in such cases. So that upon this account none are bound but the lusty and the lazy, the strong and the unemployed.

§ 6. Now in these things there is no other certainty but what is set down in the laws of every church respectively, save only this, that in all churches where such laws are used, they are ever ex-

[i] Lib. xiv. Hieroglyph. [cap. 30. ex Galeno, de inæquali intemperie, cap. 6. tom. vii. p. 745; Plin. hist. nat., lib. vii. cap. 2. et xxviii. cap. 7, Lucret., lib. iv. 640; Aristot. apud Albert. Magn. de animal., lib. vii. tract. 2. cap. 5.]

[k] C. 'Quadragesima,' de consecr., dist. 5. [Gratian. decret. part. 3. dist. 5. cap. 16. col. 2227.] et cap. 2. § 'Cum autem,' de observ. jejun. [Greg. IX. decret., lib. iii. tit. 46. cap. 2. col. 1290.]

[l] [Hor. sat., lib. ii. 2. 87.]

pounded by the measures of great charity and remission, excepting in such places where they place religion in external observances; and yet there also they pretend great gentleness when they are charged with want of it by their adversaries, as is to be seen in Albericus Pius his lucubrations against Erasmus.

§ 7. But I consider that the laws of fasting are therefore very sparingly to be imposed, when there are so many causes of being excused; and not at all but upon great occasions and particular emergencies: and when they are, the injunction is to be so made, as fewest may be excused, and none may desire it but those who cannot help it: and the evil of the contrary is very visible and apparent in the fierce and decretory injunctions of the long Lenten fast, the burden of which is so great, that they who do not think it religion, or a law of God, or a part of the divine worship, use all the arts they can to be eased of the load, cozening the law, and easing themselves, and studying a new cookery, and destroying the end of the law by keeping the letter, and buying dispensations, and complaining of the burden, and being troubled when it comes, and glad when it is over. A law of fasting is very imprudent and very uncharitable when it becomes, like Rehoboam's thigh, too big and too heavy for all the people: and what good is done by such fasting, that could not with more ease and more charity be acquired by other instruments or a better conduct of this? Mantuan[m] complained with great sorrow and great reason in this particular.

> Adjungunt etiam primi jejunia veris;
> Quæ nisi sint servata, volunt nos ire sub orcum.
> Aspice quam duris, aiunt, frænata capistris
> Gens electa fuit. Lex Christi æterna, nec unquam
> Cessatura, sinus (dicunt) sine tendat in amplos,
> Ut sit conveniens, habilisque, et idonea toti
> Humano generi, non importuna senectæ,
> Non onerosa inopi, non importabilis ægro.

The laws of religion should be, like the yoke of Christ, light and easy, fitted to the infirmities and capacities of all men; for let them be never so easy and delightful, we shall be too much tempted to neglect them, though the laws themselves be no temptation to disobedience.

§ 8. This is certain, that in a law of so great burden in itself, and so severely imposed, and so fiercely punished, and so religiously accounted of, and so superstitiously conducted, the conscience is so certainly made restless by the scruples of the conscientious persons, the arts of the crafty, the ignorance of the over-busy, and the witty nothings of the idly-employed, that the good which accidentally may be brought to some by it cannot pay for the many evils which it regularly produces in others: and that law of fasting can never be so good as the peace which it disturbs. For if you pretend your youth

[m] Lib. i. fast. [in S. Hilar., lin. 31.]

as a just excuse from the law of Lent, you shall be told that the fast consists in the quality of the meat, and in the singleness of the meal, and in the time of taking it; and that though you are excused from eating fish or pulse, yet you must eat but once; or if you do eat at night, yet you must not eat in the morning; or if you do, yet you are to be advised how much can be called a meal. And then you are not sure whether you are to fast at the beginning, or not till the consummation of your fourteenth year: and when that is out, if the understanding be so little as not to understand what and why and how, you fast to no purpose; and if sooner you do understand, it may be you are obliged in conscience, though not punishable by law. If you be old, yet some old men are lusty and strong; and the church does not intend that the age alone, but that the infirmity should excuse: and because this infirmity is divisible, it is not every infirmity that will do it; and it may be you are an easy and too gentle a judge in your own case, therefore you must ask; and who shall tell you? Cajetan and Navarre, Filliucius and Gregory Sayr, Diana and Azorius understand no physic; and they can tell you something in general of the law, but nothing absolutely in your case: if you will, be at the charge and go to a physician: for it may be if you live in the country, you have a learned man within ten or twenty miles, or it may be forty, and upon all occasions you may know of him whether your case requires ease; or it may be it requires leave this day, but you cannot have your answer so soon, and the case will alter by to-morrow; and Hippocrates[n] said, that *senes facillime ferunt jejunium*, 'old men bear fasting better than young men:' and though Cardan hath upon that aphorism spoken according to his usual manner many ingenious things, yet whether you will put your conscience upon him or no is a material consideration. But then if you be sick, you must know whether fasting can consist with your condition: for not every sickness can excuse you from the holy fast of Lent; or if you may not eat fish, yet you may be obliged to the single refection, or to the time. But that which is of material consideration is, that though you be not well, yet it may be your fasting will do you no great hurt, and if it be but little, it must not be stood upon; for fasting is intended to be an affliction of the body, and therefore you must not be too hasty to snatch at ease and liberty. But however, if you will enquire of learned men, you may have from the physicians some twenty or thirty rules by which you may guess when and in what diseases you are excused from the quality of the diet, when you are dispensed in the time, when in the frequency, when you must exchange one for the other: and to this purpose you may inform your conscience by reading Vallesius[o], Cardan, Hollerius, Zacutus Lusitanus, Paulus Zacchias, Alphonsus a Fontech[p],

[n] Lib. i. aphor. [tom. iii. p. 709. ed. 8vo. Lips. 1825.]

[o] [Comment. in Hippocrat.] de victus rat. in acut. [col. 391. sqq. fol. Colon. 1589.]

[p] In specim. med. christ. lumin. 2.

Cognatus[q], Arnoldus de Villanova[r], Petrus Hispanus[s] and his author Isaac; and if you can find them agree, and that your case is described, and their rules be rightly applied, and the particulars be well weighed, and the judgment not biassed by ease and fear and too great a care of your health, you might do well, if it were not for one thing; and that is, that physicians are not to be trusted, for they will speak excellent reason for the securing of your health, but they think they are not to answer concerning the state of your soul; and therefore they lean too much upon the wrong hand for your satisfaction, especially because Lent falls in the spring equinox, in which we are very apt to sicknesses. But then if we pretend to be excused by reason of labour and travel, every man may judge for himself: and yet there are in this a great many things to be considered; for it must be a considerable diminution of our strength, and a great inanition of spirits that can dispense with us in this so great a law: but how great that must be, if we be judges, we shall be too favourable; if others judge, they cannot tell; and if we fear to be too gentle to ourselves, we may be too rigorous, and by the laws of fasting break the laws of charity. But then it may be our labour is to come, and it will be necessary that we lay in stowage beforehand, lest we faint by the way. And it is a great labour for a man to hunt all day, or to manage the great horse,

> ——— leporem sectatus, equoque
> Lassus ab indomito: vel si Romana fatigat
> Militia assuetum Græcari, seu pila velox
> Molliter austerum studio fallente laborem[t].

A little thing will weary a soft person, and a long sport will tire a strong man: and may not these put in their plea for a pleasant or an early meal? for hungry men will plead hard. And the labour of the mind is also a great weariness to the bones; and who shall tell me how long I must study before I may be allowed not to keep the punctualities of Lent? for the thinking man must be fed tenderly and furnished with finer spirits. But then who shall come into this licence is worth enquiring; whether not only the hard student, but the preacher that speaks long, and thinks little; whether schoolmasters, advocates, orators, judges, for every one would be glad of a little liberty: and if the bodily labourer shall be excused, whether all trades that sit long and work easily, as shoemakers, tailors, glovers, bookbinders, may pretend to an exemption; for though Azorius is so kind as to except most of these, yet others do not. And what shall the poor man do? his rule is commonly to eat when he can get it; and if he be at a friend's house must he refuse to eat

[q] Lib. i. var. lect. c. 18.
[r] Libell. de esu carnium. [col. 1639, opp. fol. Bas. 1585.]
[s] Comm. in Isaac de diæta particul. [part. v. cap. de piscibus, inter opp. Isaac. vel Ysaac. fol. Lugd. 1515.]
[t] Horat. serm., lib. ii. sat. 2. [9.]

because it is not his time? or must he starve because there is nothing but flesh?

Unde fames homini vetitorum tanta ciborum est[u]?

Certainly he can hardly be tied to the measures and rules of eating ecclesiastically, that every day is in dispute whether he shall or shall not have something that he may eat naturally. But yet he is to enquire whether he be tied on those days to fast when he can be provided for: and it would also be known whether a poor man is not tied to refuse flesh and require fish where it can be had; and whether he is not bound first to spend the fragments of his fish-basket before his bits of flesh, and keep them only for necessity; and whether he may be secretly pleased that he hath that necessity put upon him that he hath flesh but no fish. There are also some hundreds of questions more that might be considered; some are pleasant cases and some are sour, some can be determined and some cannot. But the great case of conscience in this whole affair is, what great good that is which this law of Lent thus conducted can effect, which can no other ways be effected, and which can be greater than the infinite numbers of sin, and doubtings, and scruples, and fears, and troubles, and vexations, and sicknesses, and peevishness, and murmur, and complaints, and laborious arts of excuse, and cheating the law, and slavery, and tyranny, occasioned and effected by it.

§ 9. For although fasting is not only an excellent ministry to some parts of religion, but of health also,

Accipe nunc victus tenuis quæ, quantaque secum
Afferat; imprimis, valeas bene[x]; ———

yet all the world knows that long fasting is the most destructive thing in the world to our bodies, and breeds diseases sharper and more incurable than fulness and intemperance; and therefore the canon law[y] forbids a fast of two or three days, and a fast beyond our strength. Therefore it is certain that the church cannot command a long fast: and therefore in the beginning of the custom of Lent it was but a fast of one day, or two at most, eating at night. And although this fast was then a fast of liberty, and permitted to every one's choice, yet it might be enjoined in every government, according to the fore-described measures. But that instead of a fast the church should prescribe a diet, an ill diet, not only unpleasant, but unwholesome, and that with so much severity, and with so much danger, and so many snares, is no exercise of that power which Christ hath given her, but of that power which is usurped, ill-gotten, and worse administered. It is against the law of charity, and therefore ought not to be a law of the church; that men be tied for forty days together

[u] [Ovid. metam., lib. xv. 138.]
[x] Horat. serm., lib. ii. sat. 2. [7.]
[y] C. 'Non dico.' et c. 'Non mediocriter.' de consecr., dist. 5. [Gratian. decret., part. 3. capp. 18, 24. coll. 2227, 9.]

to keep from their usual diet, not to be temperate, but to be vexed and ruled, this I say is uncharitable, and therefore unlawful.

> Hoc hic quidem homines tam brevem vitam colunt,
> Quum hasce herbas hujusmodi in suam alvum congerunt,
> Formidolosas dictu, non esu modo:
> Quas herbas vecudes non edunt, homines edunt:

As the cook in the comedy[z] complained, eating herbs and ill diet makes men to live such short lives. And what interest of religion is served by eating fish and nettle pottage, is not obvious to him that hath tried it, or can consider it:

> Thestylis hanc nimio pultem sale fecit amaram[a];

death and sickness is in this pot. And I remember to have heard a friar, none of the meanest of his order, say, that he never kept Lent for a long time together, but at Easter he had a great fit of sickness: and therefore as the canonists say that a future labour and weariness may legitimate the breach of the strict measures of the law as well as if it be actual and present; so may the fear of sickness as well take off the obligation as when it is present: and of this every man that is not of an athletic health hath reason to be afraid.

§ 10. But that which relates also very much to the law, though not so much to us, is this, that all this trouble is for little or no good: if there be any good in it, it is relative, and transient, and contingent, and inconsiderable, and without hazard otherwise to be acquired. For though fools and poor folks are sometimes pressed with the evils of such a change of diet, yet the witty and the rich can change all that law into the arts and instruments of pleasure. For the greatest feasts and the greatest epicurisms use to be in fish. So he in the comedy[b],

> Musice hercle agitis ætatem, ita ut vos decet:
> Vino et victu, piscatu probo, electili
> Vitam colitis;

wine and choice fish make music at the table.

> Nam in re præsenti, ex copia piscaria
> Consulere licebit[c].

They are forbid no sorts, no quantity, no delicacies of fish or wine. And if this be objected to them, they answer, that fish is less pleasant, less nutritive than flesh, and therefore wisely chosen by the church to be the entertainments of our Lenten table: but if you object, that fish is therefore not to be eaten because it is unwholesome, breeds ill juices, and afflicts the body, they answer[d], that we are mistaken;

[z] [Plaut.] Pseudol., act. iii. scen. 2. [33.]
[a] Mantuan. [fast. in Januar. vit. S. Hilar., lin. 65.]
[b] Mostell., act. iii. scen. 2. [40.]
[c] Casina, act. ii. scen. 8. [63.]
[d] Vide Paul. Zacchiæ Quæst. medico-legal., lib. v.-tit. 1. quæst. 2. [tom. i. pp.

that fish is a delicacy; that Alexander the great was so delighted with little fishes, that he would send them for presents to his dearest friends; that Suetonius tells the same of Augustus Cæsar; that Bullinger tells that the Rhodians esteemed them that loved and lived much upon fish to be gentlemen and well bred, and all others clowns and of a rude palate; that Julius Cæsar at one triumphal feast entertained his guests with eight thousand lampreys; that the great feast which Metellus made, and which we find described in Macrobius[e], was especially made costly and delicious with the fish there presented.

——— Quo pertinet ergo
Proceros odisse lupos[f]?

He therefore that objects against the severity and affliction of the Lenten diet, knows not the arts of feasting; and complains of the church for a step-mother, when she is not only kind, but fond also in making such provisions. But if fish be unwholesome, then eat herbs, but at no hand flesh.

Parcite mortales dapibus temerare nefandis
Corpora: sunt fruges, sunt deducentia ramos
Pondere poma suo, tumidæque in vitibus uvæ.
Sunt herbæ dulces, sunt quæ mitescere flamma
Mollirique queant; nec vobis lacteus humor
Eripitur, nec mella thymi redolentia flore.
Prodiga divitias alimentaque mitia tellus
Suggerit, atque epulas sine cæde et sanguine præbet.
Carne feræ sedant jejunia[g].———

For lions and wolves, tigers and bears eat flesh; but God hath provided great variety of other things besides flesh. In some places milk is permitted, in all herbs and fruits and broths: and these are agreeable to a weak stomach; according to that of S. Paul[h], *Qui infirmus est olus manducat*, 'he that is weak eateth herbs;' it is the argument of Bruyerinus[i].

§ 11. But I shall make a better use of it if I shall observe that S. Paul gives it as a note of infirmity, when Christians upon pretences and little arguments shall not dare to eat flesh, but instead of them eat herbs; they are weak in faith that do it, and do not consider that flesh can as well be sanctified by the word of God and prayer, as lettuce and asparagus: and that a little flesh and coarse and common will better serve the end of fasting, and that fasting better serve the end of religion, than variety of fish, and a belly filled with fruits and wind[j] and superstition. All or any thing of this may de done in discipline, and with liberty: but because it may be unfit

392, 3. fol. Franc. 1688.] lib. ii. de conviv., cap. 25. [apud eund.]—vide Athenæum, lib. i. deip. cap. 25. [vid. lib. vii. passim.]

[e] Lib. iii. saturnal., cap. 13. [lege lib. ii. cap. 9.]

[f] [Hor., sat. ii. lib. 2. 35.]

[g] Ovid. metamorph., lib. xv. [75.]

[h] [Rom. xiv. 2.]

[i] De re cibar., lib. viii. cap. 1. [p. 354. ed. 8vo. Franc. 1600.]

[j] ['wine,' D.]

for so very many, and for all at some time, and may produce much evil, and hath in it no more good than to give us cause to say that it may be used, it is a very unfit thing to become the matter of an ecclesiastical law, a trouble and danger to the body, and a great snare to the conscience, which it may entangle, but it can never cleanse:

——— pinguem vitiis albumque nec ostrea,
Nec scarus, aut poterit peregrina juvare lagois[k].

To eat fish or herbs are of so little use in religion, they are so trifling an exercise of the body by restraining the appetite, that besides that all 'bodily exercise profiteth but little,' this is so little of that, as it is conducted, and as it is even in the very permissions of the law, that it is not worth all this discourse about it; only to rescue the conscience from such snares and little entanglements is of great concernment. Fasting is very good to some purposes, at some times, and to some persons: but laws regard that *quod plerumque est*, and therefore in the matter of a periodical and long-continued fast cannot but be uncharitable and unreasonable: and therefore when there is cause for such injunctions, they are to be pressed with argument and exhortation, not by empire and necessity. For supposing the law otherwise without objection, yet he that fasts against his will does not serve God; and therefore externally to be forced to do it is not a lawful exercise of an ecclesiastical power.

§ 12. The sum is this. If it be the fast of one day, it may be indicted by our lawful superior, with the measures of prudence and charity, and according to the needs of the church. But if it be the fast of many days together, it is a burden, and therefore not to be exacted, lest it be uncharitable. But if there be a law, the law ought to bend in all the flexures of reason and a probable necessity, and to prevail only by the reason of the thing, not the force of a command. But if it be no fast, but a change of diet, it is of so little profit, that it will not recompense the trouble, and will turn into superstition, and will more minister to evil than to good, and is not properly the matter of an ecclesiastical law, and the bishop hath no power to make a law in this matter: it is not for God, and it is not for religion, but for vanity, or empire, or superstition.

§ 13. This only I am to add in order to the determination of our conscience in the practice of this enquiry, that if there be a law made by the civil power for the keeping Lent, then it is for civil regards, and the law is not for superstition, but therefore to be observed as other civil laws are, with the same equity and measures of obedience; of which I am to give further accounts in the chapter of the interpretation and diminution of human laws. But if it be still an ecclesiastical law, indicted and suggested by the spiritual power, and only corroborated by the civil power, and for them efformed into

[k] Horat. ubi supra, [vers. 21.]

a law, then it obliges the conscience no otherwise than it did and ought to do in the hands of the spiritual power; that is, only when the law is for good, and not for evil, with christian liberty, and not a snare, when it is fit to be persuaded, and ought to be complied with; then and there it may be indicted, and is to be obeyed accordingly.

RULE XX.

ECCLESIASTICAL LAWS MUST EVER PROMOTE THE SERVICE OF GOD AND THE GOOD OF SOULS; BUT MUST NEVER PUT A SNARE OR STUMBLING-BLOCK TO CONSCIENCES.

§ 1. THE holy primitives in their laws and actions ever kept that saying of the apostle in their eye and in their heart, *πάντα πρὸς οἰκοδομὴν γενέσθω*[l] every word, every action must be *πρὸς οἰκοδομὴν τῆς χρείας*[m], 'for the use of edifying:' 'let all things be done for edification:' and therefore much more must laws, which have a permanent causality and influence upon the actions of the church; for therefore they are either a permanent good or evil.

§ 2. When the churches had hope of converting the Jews by gentleness and compliance in some outward rites, the church made laws of combination and analogy, of continuation and correspondence in some observances. Thus the apostles at the council of Jerusalem indicted the abstinence from blood, as being infinitely offensive to the Jews, and apt to estrange their hearts from the whole religion of them that eat it. And therefore the law was made that it might cement the stones of the spiritual building, and the Jews and gentiles might make the two walls of the church[n]. But when the Jews refused to come in, and excepting the remnant only (of which S. Paul speaks) which were saved, the rest grew to hate the Lord of life, then the church considered that to use their liberty would be for the edification of the church of the gentiles; and then they remembered that Moses had given the Jews flesh, but forbad them blood, but Christ gave us both flesh and blood, and forbad neither; and therefore they returned to that use of it that was most for charity and liberty, instruction and edification. Upon the same account, though the church was kind to the Jews, yet they would take care not to offend any of her children by retaining words that might abuse them into a good opinion of their religion; and therefore at first they abstained

[l] [1 Cor. xiv. 26.]
[m] [Eph. iv. 29.]
[n] Vide ult. caput libri ii. [vol. ix. p. 496 sqq.]

from the name of priest, and temple, as is to be observed in Justin Martyr, Ignatius, and Minutius. At the first the Christians kept the jewish sabbath; but in the council of Laodicea[o] it was forbidden; and in the seventieth canon of that collection which goes under the name of the apostles[p], which was published much about the same time, the Christians are forbidden *neque jejunia cum judæis exercere, nec festos dies agere, nec quæ in ipsorum celebritatibus xenia mittuntur accipere,* 'to keep the jewish fasts or feasts, or to receive their presents,' viz., of unleavened cakes 'which upon those days they usually sent abroad.' And the reason of the prohibition is, lest judaism should be valued, and lest Christians be scandalized at such compliance, as Zonaras and Balsamo[q] note upon that canon of the Laodicean council, but is more fully discoursed by Constantine upon the keeping of Easter, as Eusebius reports in his life[r].

§ 3. To this end all laws and canons must be made; not only for that great reason, because the end of the commandment is charity, and of all ecclesiastical government is 'the building up' the church 'in love[s];' but because the church hath no power to make laws which are not for edification: and this the apostle testifies twice in one epistle[t] using the same words; that the power and 'authority which the Lord had given to him was for edification, not for destruction.' And this is not only so to be understood, that if the church makes laws which are not for edification, she does amiss; but that she obliges not, her laws are null, and do not bind the conscience. For it is otherwise here than in civil laws: right or wrong the civil constitutions bind the body or the soul; but because the verification of the laws of the church is in the hands of God, and He only materially and effectively punishes the rebellious against this government, it is certain He will do only according to the merit of the cause, and not verify a power which He hath forbidden. But in the civil courts there is a punishment that is exterminating or afflictive, which can punish them whom God will finally absolve. Therefore it is that when the church does any thing beyond her commission, she does no way oblige the conscience, neither actively nor passively: the church punishes no man temporally, and God will not either temporally or eternally afflict those who do not obey there where He hath given no man power to command. And this is greatly to be observed in all the cases of conscience concerning ecclesiastical laws. If we understand where the spiritual power can command, where she can exhort and ought to prevail, we have found out all the measures of our obedience. But if she goes beyond her commission, she hurts none but herself; for she hath nothing to do with bodies, and our souls are in safe hands. And the case is much

[o] Can. 29. [tom. i. col. 785 E.]
[p] [al. can. 62.—Coteler. patr. apost., tom. i. p. 451.]
[q] [Apud Bevereg. synodic., tom. i. p. 466.]
[r] Lib. iii. cap. 17. [al. 18.]
[s] [Eph. iv. 16.]
[t] [2 Cor. x. 8; xiii. 10.]

alike, in case the spiritual law be bound by the civil power: for the king when he makes laws of religion is tied up to the evangelical measures; and if he prevaricates, he does indeed tie us to a passive obedience, but the conscience is no otherwise bound; and he is to govern Christ's church by the same measures with which the apostles did, and the bishops their successors did and ought to do before the civil power was christian. For he hath no more power over consciences than they had; and therefore he ought not by the afflictions of the body to invade the soul: but if he does, ἔχει δύναμιν, ἀλλὰ μὴ ἐξουσίαν, 'he hath only power' over bodies, but no 'authority' over the conscience. This being considered, the rule hath effect in the following particulars.

§ 4. 1) This rule is to be understood positively and affirmatively; that is, the church in all her constitutions must take care that the church be edified and built up in some grace or other. But not so, that whatsoever is for edification she hath power to command. The measures and limits of her legislative power I have already described[u]; it must be within those circles: and though other things without them may be useful, and fit for instruction, or to promote the interest of a virtue; yet Christ hath left them at liberty, and His church hath no power to bind beyond His commission. They can exhort and persuade, and by consent they can prescribe; but to the making of a law there is something else required, besides that it be apt to edify or to instruct. For (besides that it must be of something placed in her power) it must edify, and not destroy; it must build up, and not pull down; that is, it must build with all hands, and not pull down with one.

§ 5. I instance in the institution of significant ceremonies, that is, such which are not matters of order and decency, but merely for signification and the representment of some truth or mystery. Those which are prudently chosen are in their own nature apt to instruct. Thus the use of pictures in the Greek and in the Lutheran churches is so far useful, that it can convey a story, and a great and a good example to the people that come thither, and so far they may be for edification. But because these can also and do too often degenerate into abuse and invade religion, to make a law of these is not safe; and when that law does prevail to any evil that is not easily by other means cured, it does not prevail upon the conscience: and indeed to make a law for the use of them is not directly within the commission of the ecclesiastical power.

§ 6. But there is also more in it than thus. For although significant ceremonies can be for edification to the church in some degree, and in some persons: yet it is to be considered whether the introducing of such things does not destroy the church, not only in her christian liberty, but in the simplicity and purity and spirituality of

[u] Rule 1—4 of this chapter. [p. 264 sqq.]

her religion, by insensibly changing it into a ceremonial and external service. To the ceremonial law of the Jews nothing was to be added, and from it nothing was to be subtracted; and in christianity we have less reason to add any thing of ceremony, excepting the circumstances and advantages of the very ministry, as time and place, and vessels and ornaments and necessary appendages. But when we speak of rituals or ceremonies, that is, exterior actions or things besides the institution or command of Christ, either we intend them as a part of the divine service, and then they are unlawful and intolerable; or if only for signification, that is so little a thing, of so inconsiderable use in the fulness and clarity of the revelations evangelical, that besides that it keeps Christians still in the state of infancy and minority, and supposes them 'always learning, and never coming to the knowledge of the truth[x],' it ought not to stand against any danger or offence that can by them be brought to any wise or good Christians.

§ 7. In some ages of the primitive church, and in some churches, they gave to persons to be baptized milk and honey or a little wine (as we read in Tertullian[y] and S. Hierome[z]), to signify that those catechumens were babes in Christ; and in a rebus to recommend to them that saying of S. Peter[a], "as new-born babes desire the sincere milk of the word." Now besides that this was not usual, to give hieroglyphics where they had plain precepts, and to give signs of things that were present and perceived, it was of so very little use, that all churches that I know of have laid it aside. It was also a custom anciently, when they brought the bread and wine to the altar or communion table, to present milk along with it; and this also did signify nutrition by the body and blood of Christ. But the council of Bracara[b] forbad it upon this reason, *quia evidens exemplum evangelicæ veritatis . . illud offerri non sinit*, because Christ did no such thing, and commanded no such thing; and therefore nothing is to be added to those ceremonies which Christ left. And indeed if the church might add things or rituals of signification, then the walls might be covered with the figures of doves, sheep, lambs, serpents, birds, and the communion table with bread, wine, herbs, tapers, pigeons, raisins, honey, milk, and lambs, or whatever else the wit of man or the nature and sense of the mysteries might invent or import. But concerning such things as these the judgment of Balsamon[c] is this; *Eos male facere arbitror, qui in ecclesia columbas emittunt pro Spiritus sancti adventu; et qui pro illa stella quæ novo modo apparuerat, et erat admirabilis, cereos accendunt; et qui arcanam et salu-*

[x] [2 Tim. iii. 17.]
[y] Lib. i. contr. Marcion. [cap. 14. p. 372 B.—De coron. milit., cap. iii, p. 102 A.]
[z] Dial. adv. Luciferianos. [tom. iv. part. 2. col. 294.]
[a] [1 Pet. ii. 2.]
[b] [Concil. Bracar. iii, cap. 2, tom. iii. col. 1033 A.]
[c] In can. 82. synod. vi. in Trullo. [apud Bevereg. synodic., tom. i. p. 252 F.]

tarem Domini et Dei et servatoris nostri Jesu Christi generationem thoro strato exprimunt: et quæ sunt supra rationem et mentis cogitationem humanis adinventionibus describunt: 'to let a pigeon fly to signify the coming of the holy Spirit; to light up candles to represent the epiphany; to dress a bed to express the secret and ineffable generation of the Saviour of the world;' to which he might have added, to prepare the figure of the crucifix, and to bury an image to describe the great sacrifice of the cross for the redemption of mankind; these are things to no purpose: not only for the levity and theatrical gaieties and representments unbefitting the gravity and purity and spirituality of christian religion; but also the manner of teaching these truths by symbolical things and actions is too low, too suspicious, too dangerous to be mingled with the divine liturgies. Christ may as He please consign His own good things that He gives us; but He consigns no good, and represents none but what He also gives and effects in that ministration and under that sign: but a symbolical rite of human invention to signify what it does not effect, and then introduced into the solemn worship of God, is so like those vain imaginations and representments forbidden in the second commandment, that the very suspicion is more against edification than their use can pretend to. But if any such ritual or ceremony be introduced by custom or by consent, it ought to be used as men use their champignons; they boil them in three or four waters, cleansing them both by water and fire before they be used at all; much more before they be persuaded into a law.

§ 8. 2) But when they can be innocently used, that is, when they can be made useful, and yet be innocent in themselves, yet it is to be taken care of that they may not only by their abuse, or by mistake, but that by their number they be not troublesome and inconvenient. This advice I learn from S. Austin[d], in whose time the church had gone beyond her rule and beyond her power in the introducing or permitting to be introduced very many significant ceremonies; every one of which he could not directly blame, but yet they were servile burdens, and intolerable besides, by their number and their load. *Etiamsi non intelligatur quomodo contra fidem sunt, tamen quoniam onerant religionem et servilibus oneribus premunt, quam Christus voluit paucissimis et manifestis celebrationum sacramentis liberam esse; propterea faciunt ut tolerabilior sit conditio judæorum, qui etiamsi tempus libertatis non agnoverunt, legalibus tamen sarcinis subjiciebantur, non humanis præsumptionibus:* 'although it is not to be understood how these things are directly against the faith, yet they burden religion, and load with a servile pressure her whom Christ left free and charged only with the two sacraments: therefore our case is worse than that of the Jews; for though they had not a time of liberty, yet they were charged only with burdens that God im-

[d] Epist. cxix. [al. lv.] cap. 19. [tom. ii. col. 142.]

posed, but not with the presumptions of man:' which words are a severe condemnation of such laws and customs ecclesiastical. And therefore there is reason to celebrate and honour the wisdom and prudence of the church of England, which hath in all her offices retained but one ritual or ceremony that is not of divine ordinance or apostolical practice, and that is, the cross in baptism: which though it be a significant ceremony, and of no other use, yet as it is a compliance with the practice of all ancient churches[e], so it is very innocent in itself, and being one and alone is in no regard troublesome or afflictive to those that understand her power and her liberty and her reason. I said, she hath one only ceremony of her own appointment: for the ring in marriage is the symbol of a civil and a religious contract, it is a pledge and custom of the nation, not of the religion: and those other circumstances of her worship are but determinations of time and place and manner of a duty; they serve to other purposes besides signification, they were not made for that, but for order and decency, for which there is an apostolical precept, and a natural reason, and an evident necessity, or a great convenience. Now if besides these uses they can be construed to any good signification or instruction, that is so far from being a prejudice to them, that it is their advantage, their principal end being different, and warranted, and not destroyed by their superinduced and accidental use. In other things we are to remember that figures and shadows were for the Old testament, but light and manifestation is in the New; and the Egyptians indeed did teach religion by symbolical figures; and in the eastern empire their laws were written with characters and abbreviatures: and in the schools of Plato and Pythagoras they taught their scholars by numbers and figures; and Diodorus of Tarsus and Origen brought in an allegorical way of expounding the scriptures, and almost wholly, but certainly too much, left the literal and simple way of interpretation, and so do the perfectionists and some others at this day: but we that walk in the light of the gospel, and rejoice in that light, have received from Christ and His apostles an easier way of teaching the people; and are not therefore to return to the elements and rituals of Jews and pagan schools. Christ left no sign but two that did also effect as well as signify: and if they had only signified, and done no other good, we have no reason to believe that they would have been appointed. But this thing is gone into so great inconvenience in the church of Rome, that there are not only so many ceremonies as do fill a book *in folio*, but the reasons and significations of them are offered to us by Durandus, Durantus, Vicecomes, and others: but it is certain that all the propositions and mysteries signified by them are very much sooner learned than the meaning of those ceremonies. But that those rituals or circumstances of liturgy, the actions, ges-

[e] S. Cyprian. de lapsis, [p. 122.] et epist. lvi. [al. lviii. p. 125.]

tures, habits, and instruments of order and decency, be also significant, gives an advantage to the things themselves, and makes their first intended ministry of some more usefulness.

§ 9. 3) Ecclesiastical laws are not then for edification when they give offence to the wise and to the good, to the lovers of peace and the obedient to government; that is, when there is in their nature so much real evil, or so much cause of jealousy of which the lawgivers cannot purge them, that the good and complying principles that are in the good subjects cannot be sufficient to give them entertainment. But of this the lawgivers are to be the judges; and if they insist upon them when there is cause enough to lay them aside, they 'sin against their brethren,' and they 'sin against Christ.' But the laws themselves do not bind, if the exceptions against them be just and reasonable and sufficient: which whether they be or no, the church rulers shall judge at present, and God shall judge at last: and in the mean time there can be no other rule given, but that the superior and the inferior endeavour by all ways of prudence and humility to satisfy one another. A peaceable mind, and willingness to learn, and a charitable exposition, are the just dispositions of the subject's duty; and the governors are to take all the care of souls that can be supposed to be the duty of spiritual fathers: and if these things be done, there will be no hatred, and no reproach, and no schism. But if the question be who shall yield, the governors certainly have authority, and the others say they have reason: the one ought to be pitied, and the other ought to be obeyed; but both ought to yield: only the subject must yield outward obedience, though otherwise it were not necessary, yet if it be lawful it accidentally becomes so; and if it be not lawful, or if he thinks it is not, yet he must be careful he give no offence, but modestly, humbly, and without reproach offer his reasons against the law. But then the governors also must yield: they must not consider how much is possible for them, but how much is fit; they must meditate nothing of empire, but much of charity; they must consider which will do most good to the souls to whom they do relate; they must with meekness instruct the gainsayers, and with sweetness endeavour to win them, and bear with the infirmities of the weak, if they can perceive the weakness to be innocent. But if a crime be mingled with it, and be discerned, it is a matter of edification that such criminals be discountenanced, and the authority be immured and kept from contempt. But in these and the like accidents the Spirit of God must be invocated and implored and endeared, that by His aids the church may be safely and wisely and charitably governed. Whoever wants wisdom must ask it of God; and God will be easily entreated to do good, and to give good things.

§ 10. This only is to be added, that according as the matter of the laws is of advantage, or necessity, or only of convenience more or less, so are the governors of churches and guides of souls to be

more or less easy in dispensing or annulling their laws: till then, neither the rulers nor the subject can by any other means be excused from sin but by a hearty enquiry, and a sincere humble labour to do their duty to each other according to the best of their understanding. For if this does not procure a just compliance, it will at least preserve peace and innocence: and though the first is best, because it includes these, yet these are the next best.

§ 11. 4) Ecclesiastical laws that encourage and adorn, and add degrees and moments and zeal to the service of God, are good ministries of edification; and till by excess or accident they convert into evil, are of themselves fit to minister to religion.

OF MUSIC IN CHURCHES.

Thus the use of psalmody or singing of psalms, because it can stir up the affections, and make religion please more faculties, is very apt for the edification of churches. The use of musical instruments may also add some little advantages to singing, but they are more apt to change religion into air and fancies, and take off some of its simplicity and are not so fitted for edification. *Ad disciplinas aliquid artificiale organum non esse adhibendum,* said Aristotle[f] as he is quoted by Aquinas[g], 'artificial instruments are not fit to be applied to the use of disciplines.' That is, the music of instruments of itself does not make a man wiser, or instruct him in any thing. This is true, and therefore they are not of themselves very good ministries of religion. But vocal music, being natural, and the action of a man with the circumstance of pleasure, if it come to invest religion is of great use, as all the experience of man can tell. Instruments may guide the voice, and so they may be used; but they are but a friend's friend to religion, and can have no near relation to the service of God. Justin Martyr[h] asks the question why the church uses songs in her liturgy after the manner of the unwise and weak under the law: answers, *οὐ τὸ ᾄσαι ἁπλῶς ἐστι τοῖς νηπίοις ἁρμόδειον, ἀλλὰ τὸ μετὰ τῶν ἀψύχων ὀργάνων ᾄσαι, καὶ μετὰ ὀρχήσεως καὶ κροτάλων,* 'that merely to sing is not proper to weak and ignorant persons, but to sing with inanimate instruments, with dancings and with timbrels: therefore in the churches we do not use hymns with such organs or instruments.' And S. Chrysostom[i] saith that those instruments were permitted to the Jews *ob eorum imbecillitatem,* 'for their weakness:' and he adds, 'as the Jews did praise God by all the instruments of music, so we are commanded to praise Him with all our members, our eyes, our tongues, our ears, our hands.' The same thing is also affirmed by Isidore Pelusiot[k];—'Since God permitted sacrifices and

[f] [Pol., lib. viii. cap. 6.]
[g] 2. 2ae. q. 91. art. 2. [tom. xi. fol. 229 b.]
[h] Quæst. cvii. ad orthod. [p. 468 A.]
[i] In psalm. cl. [tom. v. p. 502.]
[k] Lib. i. ep. 457. [p. 116.]

effusions of blood for their childishness, it is no wonder that He did tolerate that music which is made by the harp and psaltery.' But then in relation to us, he expounds that psalm to signify not literally, but mystically. By 'the sound of the trumpet' he understands the memory of the resurrection; by 'psaltery and harp,' our tongue and mouth; by 'timbrel and dances,' our body and mind; by 'every thing that hath breath,' every spirit: angels and men are called upon to praise the Lord. But now upon this account we may easily perceive the difference of vocal from instrumental music in churches; this being but typical of that, and permitted then when they knew not so well to use their voices and tongues to praise the Lord. And certainly the difference is very material, not only because we find these wise men saying that instruments were typical and permitted διὰ νηπιότητα, 'for their tenderness and infancy:' but also because by the voice and tongue we can properly and directly serve God, and as well by singing as saying, and better, if it be better; which can never be said of instrumental music: which though I cannot condemn if it be used as a help to psalmody, yet it must not be called so much as a circumstance of the divine service, for that is all can be said of vocal music. But of this the use is very great, and I will only represent it in the words of Justin Martyr[1]; ὑπολέλειπται τὸ ᾄσαι ἁπλῶς, 'simple and plain singing is left in churches. For this stirs up the mind with a certain pleasure unto an ardent desire of that which is celebrated in the song; it appeases the desires and affections of the flesh; it drives away the evil thoughts of our enemies that are invisible and secretly arise; it makes the mind irriguous and apt to bring forth holy and divine fruits; it makes the generous contenders in piety valiant and strong in adversity, and it brings a medicine and remedy to all the evil accidents of our life. S. Paul in his spiritual armoury calls this the "sword of the Spirit:" for it is all of it the word of God which is celebrated in the mind, in the song and in the verse; it drives away evil spirits, and the pious mind is by the songs of the church perfected in virtue.' The eulogy is fair and large: but yet all wise and sober persons do find fault when the psalmody which is recommended to us by the practice of Christ and His apostles, does sensibly pass further into art than into religion, and serves pleasure more than devotion; when it recedes from that native simplicity and gravity which served the affections and holy aspirations of so many ages of the church; when it is so conducted that it shall not be for edification, that is, when it is so made accurate and curious that none can join in it but musicians, and they also are not so recitative, they do not sing and express the words so plainly that they which hear do understand; for by this means the greatest benefit and use of edification is lost: as appears in those words of S. Basil[m], who when he had highly commended τῆς μελῳ-

[1] [Ubi supra.]

[m] In psalm. [i. tom. i. p. 90 B.]

δίας τερπνὸν τοῖς δόγμασιν ἐγκαταμιχθὲν, 'the delight of melody mingled with heavenly mysteries,' he adds, Διὰ τοῦτο τὰ ἐναρμόνια ταῦτα μέλη τῶν ψαλμῶν ἡμῖν ἐπινενόηται, 'for this cause were the tunes of harmonious psalms devised for us,' that they which either are young in years, or novices in instruction, might when they think they sing, have their souls instructed in the truth. Ὦ τῆς σοφῆς ἐπινοίας τοῦ διδασκάλου, ὁμοῦ τε ᾄδειν ἡμᾶς καὶ τὰ λυσιτελῆ μανθάνειν μηχανωμένου[n], 'O the great wisdom of our heavenly Master, which at the same time designs to have us pleased and instructed to perfection by the singing of psalms.' But in this and all things like this the rulers of churches are to do that which most promotes the end of their institution. *Salus populi suprema lex esto*[o], is a rule which in this affair hath no exception: the salvation of one soul is more than all the interests in the world besides.

§ 12. 5) Although counsels evangelical being observed are greatly for the glory of God and for the edification of the church; yet it is not for edification that they be enjoined, and therefore make not the proper subject and matter of ecclesiastical laws: and the reason is, all that wisdom by which God was moved not to enjoin it, even because all men cannot take it, and few men will; and the imposition is not ζυγὸς χρηστὸς, 'a gentle yoke,' but is a perpetual snare. For here is the difference between things indifferent and counsels evangelical, though alike they be left under no command by God, yet for several reasons: for things in themselves indifferent are too little for the service of God, and counsels evangelical are too great for our strengths; and therefore God will not be worshipped by those, and He will not put any necessity upon these: but yet those may be made matter of human laws, because they may become useful to many purposes; but counsels cannot be made into laws, not because the nature of the things themselves will not bear the load of a commandment, but because our natures will not: and therefore they are to be advised, encouraged, preached, practised, commended and rewarded; any thing but enjoined, or made into necessary duty. And indeed, when we consider that counsels of perfection are a direct worship of God when they are performed, and that God only is to make laws of His own worship and direct religion, and that in these He would make no law, because these should not become necessary, but the instruments of a voluntary service, that in these things we might shew our love, as in the matter of His laws we shew our obedience; the church cannot have a power legislative in these, for she is the mouth of Christ, to command what He commands, to exhort to what He exhorts: and as the church cannot make that to be a part of the divine worship which God hath not made so, and therefore things indifferent may become ministries and circumstances of religion, but no parts of it; so neither can any thing be otherwise a divine worship than God hath made it, and therefore man cannot make that to be a

[n] [Ibid. p. 91 B.]

[o] [Lex xii. tabb. apud Cic. de leg., lib. iii. cap. 3.]

necessary worship which God hath not made so, but hath choosingly and wisely left to the choice of our will and love. And to this sense was that saying of Athenagoras in his apology for the Christians[o], *Deus ad ea quæ præter naturam sunt neminem movet,* 'God moves no man to things which are besides his nature;' that is, He urges no man to do such things which must suppose great violence to be done to nature.

§ 13. But the great matter in this whole affair is, that counsels evangelical when they are not left at liberty become a snare; not only because they are commonly great violations of our desires, or great invasions of our interest, and therefore fit only to be undertaken by a very few and after a long experience of their strength: but also because though they be excellencies in themselves, yet in some cases, and in some conjugations of circumstances they do destroy another duty; as giving all our goods to the poor hinders us from making provision for our relatives, a state of celibate exposes us to a perpetual ustulation; and then either by our contrary state of affairs, or by our unequal strengths, pull down that building which they intended to set up. Some canonists say that the church forbids a mutual congression of married pairs upon festival days; upon which days the Jews thought it a special duty, but the heathens abstained; but how if one be willing, and the other is not? he shall be put to dispute between two duties, justice and religion, and shall be forced like him in the satire to ask pardon for doing of his duty;

> Ille petit veniam quoties non abstinet uxor
> Concubitu sacris observandisque diebus[p].

The council of Eliberis[q] commanded abstinence from conjugal rights for three or four or seven days before the communion. Pope Liberius[r] commanded the same during the whole time of Lent; *quia pæne nihil valet jejunium quod conjugali opere polluitur,* supposing the fast is polluted by such congressions: but because this relied upon an heretical stock, that marriage is unclean, and scarce to be allowed to be holy, of itself it seems unreasonable: but when they commanded that those which were married should that day communicate, and they that did communicate should that night abstain, (but that they had no power to command any such thing,) the law itself laid a snare for souls, and if it could have changed the action into a sin, would have engaged most married pairs to become sinners.

§ 14. Upon the same account, but upon very much more reason, those churches which enjoin celibate to all their numerous clergy do unreasonably and uncharitably; they have no power to make any such law, and if they had, they ought not to do it, upon the account

[o] [vid. § 31. p. 309. inter. opp. Justin.]

[p] Juven., sat. vi. [535.]

[q] [Apud Gratian. de consecr., dist. ii. can. 21. col. 2089; Burchard. decret. lib. v. cap. 22. fol. 137.]

[r] [Inter concill. ed. reg., tom. iii. p. 161.]

of this rule, because they ought not to lay a stumbling-block and a stone of offence in their brother's way.

OF THE MARRIAGES OF BISHOPS AND PRIESTS.

§ 15. Now concerning this, I shall first consider the purpose and influence of the rule upon it. For if this be a stone of offence, if this law be directly and regularly a snare to consciences, it is certain it is an ungodly law, and of no obligation to the subjects of any church. Now this relying upon experience and being best proved by the event of things, will be sufficiently cleared by the testimony of those wise persons who have observed the evil, and wished a remedy by annulling the law.

§ 16. 1) Æneas Sylvius[s], who was afterwards pope Pius the second, said that the single life of the clergy was upon good reason at first introduced, but that for better reason it ought now to be let alone and taken off. And of the same mind was Panormitan[t]; saying that we are taught by experience that from this law of celibate not continency but a contrary effect does follow: for the priests do not live spiritually, neither are they clean, but are polluted with unlawful mixtures to their great sin and shame, whereas it were chastity if it were a society with their own wife. And indeed the scandal was so great, the stories so intolerable, their adulteries so frequent, their lusts so discovered, and the accidents so ridiculous, that the clergy became the contempt and jest of buffoons and drunkards, and the pity and shame of wise and sober men. And it was a strange thing which in the history of the council of Trent[u] is told out of Zuinglius[x], that writing to the cantons of the Swisses, he made mention of a law or edict made by the magistrates their predecessors, that every priest should be bound to have his proper concubine, that he might not ensnare the chastity of honest women; adding, that though it seemed a ridiculous decree, yet it could not be avoided, unless the word concubine were changed into wife, and the permission before given to unlawful concubinate might be given now to lawful marriage. And who please to see instances more than enough to verify the infinite scandals given by the unmarried clergy generally, may be glutted with them in Henry Stephens' apology for Herodotus[y]. But if he be less relied upon, as being a friend to the complaining side, the testimony of Cassander[z] will not so easily be rejected, saying, "If ever there was a time for changing of an old custom, certainly these

[s] Platina in vita Pii II. [p. 302. ed. fol. Colon. 1574.] et Sabellicus, ennead. x. lib. 6. [tom. ii. col. 966. fol. Bas. 1560.]

[t] In c. 'Cum olim,' de cleric. conjugat. [In decret. lib. v. s. p. fol. Nuremb. 1486.]

[u] [Sarpi, p. 14. ed. Lat. fol. Aug. Trinob. 1620.]

[x] Vide etiam Sleidan. hist., lib. v. [lib. iv. p. 25. fol. Gen. 1563.]

[y] [Ad calc. ed. Gale, fol. Lond. 1679.]

[z] Consult. art. 23. [p. 990.]

times require it; where all the best and most religious priests acknowledging their infirmity, and abhorring the turpitude of perpetual fornication, if publicly they dare not, yet privately they marry." And they that did not did worse: "for things," saith he, "are come to that pass, that scarce one in a hundred abstains from the fellowship of women." And Alvarus Pelagius[a] telling sad stories of the incests, uncleanness, and fornications of the priests and friars, tells of their gluttony, their idleness and ease, their pride and arrogancy, their receiving boys into their houses and cloisters, their conversation with nuns and secular women, that it is no wonder there is amongst them so impure a clergy, that so many good men have complained, and all have been ashamed of it. And therefore upon this account we may consider the evils which the church suffers by such a law which permits their clergy to walk in the fire, and commands them not to be burned; or rather not that so much, but they forbid them the use of cold water: I say, we may consider the intolerable scandals, the infinite diminution of spiritual good, the great loss and hazard of souls, when fornicators and adulterers, pæderasts and the impurest persons shall by their sermons and common talk dishonour marriage, and at the same time put their polluted hands to the dreadful mysteries, and their tongues to sing hymns to God, and to intercede for the people, who the night before have polluted the temples of the Holy Ghost, and defiled them unto the ground. But I had rather these things were read in the words of other men, and therefore I shall remit the reader that would see heaps of such sad complaints to the *Via regia* of Weicelius[b], to Andreas Fricius Modrevius *De matrimonio presbyterorum*, and in his apology[c], Albertus Pighius[d], Dominicus Soto[e], the *Centum gravamina Germaniæ*[f], John Gerson[g], Polydore Vergil[h]. Many more might be reckoned, but these are witnesses beyond exception; especially if we add that the complaints were made by wise and grave men many ages together, and that their complaints were of an old canker in the church, that could never be cured, because the spiritual physicians did see, but would not take the cause away. For this thing we find complained of by S. Bernard[i], Rupertus Tuitiensis[k] his contemporary, who compares the clergy of that age to the Nicolaitans, whom God hated for their uncleanness, by the author of the book *De singularitate clericorum* attributed to S. Cyprian[l], by

[a] De planctu ecclesiæ, lib. ii. art. 73. [fol. 240 sqq. ed. fol. Lugd. 1617.]

[b] [In fascic. rer. expetend. per Orthuin. Grat., tom. ii. p. 703.]

[c] Cap. 20. lib. iv. de eccles. [p. 322. fol. Bas. 1559.]

[d] Controvers. 15. sub initio. [p. 212. 8vo. Par. 1549.]

[e] Lib. vii. de just. et jur. q. 6. art. 1. [fol. 248. ed. fol. Lugd. 1569.]

[f] Gravam. lxxv. et xci. [In fascic. rer. expetend. per Orthuin. Grat., tom. i. pp. 370, 3.]

[g] De vita spirit. animæ, sect. 4. corol. 14. prop. 3. [tom. iv. col. 215, 6.]

[h] De invent. rerum, lib. v. c. 4. [p. 152.]

[i] Lib. de conversione ad clericos, cap. 29. [col. 856, 7.]

[k] [In apocal., li . ii. cap. 2. tom. ii. p. 360.]

[l] [Ad calc. opp. Cyprian., p. 5 sqq.]

Gulielmus Durandus[m] in his book *De modo concilii generalis celebrandi*, S. Hudelricus bishop of Auspurg, who wrote against the constrained single life of priests to pope Nicholas[n], Robert Holkot[o], Nicolaus de Clemangiis[p], Petrus de Alliaco[q], Tostatus[r], Platina in the life of pope Marcellinus[s]. The scandal must needs be notorious and intolerable when so many persons of the engaged party, of the Roman church, whence all this mischief came, durst so openly complain, and wish the annulling of the law of single life to the clergy, or that the spirit of purity were given to all that minister to a pure religion, the religion of Jesus Christ. But the thing itself was its own indication; it was a black cloud, and all good men abhorred it: for things came to that pass that the bishops' officials took annuities from all their parish priests for licences to keep concubines; and if they came to a continent person that told them he kept none, they replied, that yet he must pay, because he might if he would; as is reported by divers of their own, particularly by the *Centum gravamina*, and by Espencæus *in epist. ad Titum, cap.* 1[t]. I end this with the words of Martinus Peresius[u], *Multis piis visum est ut leges de cœlibatu tollerentur propter scandala*, 'many pious persons have thought it necessary that the law of priests' single life should be taken away by reason of the scandals which it brings.' For S. Paul[x] was so curious, even in this very instance, that when he had but commended the ease and advantages of the single life to all Christians in regard of the present necessity, and the affairs of religion under persecution, he presently claps in this caution, I speak not this to lay a snare before you, *sed vestro commodo:* if any of you find it for your ease or advantage, well and good, but at no hand let it be a snare.

§ 17. 2) But that which next is considerable is, that this law is an intolerable burden. So said Paphnutius in the Nicene council[y]; he called it ὑπερβολὴν τῆς ἀκριβείας, 'an excess of exactness:' and therefore when some bishops would have had it made into a law, he advised the contrary; *nolite gravare jugum ecclesiasticorum*, 'lay not a load upon the ecclesiastical state; for "marriage is honourable in all men and the bed undefiled:"' adding, that 'all cannot bear that institution of life that is void of all affections;' and as he supposed, 'no man should be saved in his chastity if husbands were deprived of their wives, but that such society was continence and chastity.' So

[m] Part. 2. tit. xlvi. [in tractt. univ. jur., tom. xiii. part. 1. fol. 166.]
[n] [Inter patr. orthodox. monum. J. Grynæi, tom. i. p. 481 sqq.]
[o] Lect. clxxxviii. in Sapient. [in cap. 16. p. 603. fol. s. l. 1586.]
[p] De corrupto eccles. statu. [al. Spec. eccles. pontif. cap. 15. § 2. p. 15. opp. 4to. Lugd. Bat. 1613.]
[q] De reformatione eccles. [in fascic. rer. ut supra, tom. i. p. 414.]
[r] Opusc. contr. clericos concubinar. concl. ult. [p. 67. fol. Colon. Agripp. 1613.]
[s] [p. 36. fol. Colon. 1574.]
[t] [Digress. 2. p. 479.]
[u] [De tradit. apost., part. iii. fol. 171 b. fol. Colon. 1549.]
[x] [1 Cor. vii.]
[y] [Apud Socrat., H. E. i. 11. p. 39.]

Gelasius Cyzicenus[z] tells the story. And though Turrian the jesuit[a] would fain make the world not believe it, yet he hath prevailed nothing. For it is not only related by Gelasius, but by Ruffinus[b], by Socrates, Sozomen, by Aurelius Cassiodorus the author of the tripartite history[c], by Suidas[d], Nicephorus Callistus[e], and by Gratian[f]. And the synod did obey the counsel. And therefore the third canon of that council[g] cannot be understood by any learned man to be a prohibition to the clergy to marry: it forbids a bishop, a priest, or deacon, συνείσακτον γυναῖκα ἔχειν, 'to have a woman introduced,' unless she be a mother, a sister, or an aunt, that is, one of whom there can be no suspicion. *Mulierem extraneam*, 'a woman that is not a domestic;' so Ruffinus[h], Fulgentius Ferrandus[i], and the fourth council of Toledo[k] expound the word συνείσακτον. For by that time the opinion of single life had prevailed both by right and by wrong; for in the three hundred years of danger and persecution many that were under the cross would not entangle themselves with secular relations, but fight naked and expedite: but besides this, the Nicolaitans, and the Encratites, and the Manichees, and the Montanists, and the Gnostics, and the Priscillianists had so disgraced marriage, and pretended such purities to be in single life, that it was very easy in that conjunction of affairs to insinuate it into the zeal and affections of some less discerning persons, who not being content to have marriage left at liberty as it was during the whole three hundred years, would needs have it imposed: not discerning in the mean time that amongst those who pretended to the purities of celibate, some would yet bring women into their houses; so did the Hieracitæ, as Epiphanius[l] reports of them, pretending they did not marry them, but made them housekeepers: they were their 'gallants[m],' mere platonics, or as they called them, 'sisters;' but they would kiss and embrace tenderly, and sometimes sleep together, but still would be thought virgins; as we find in an epistle of S. Cyprian[n], where he commands such persons to be thrust from the communion of the faithful, unless they would either marry, or leave the communion of their women; for that gloss had not yet invaded the persuasions of men which since hath prevailed, *Sacerdos amplectens mulierem, præsumitur benedicere*, 'if a priest embrace a woman, it is to be presumed he only gives her a blessing.' And the same S. Chrysostom[o] tells of

[z] *In actis concil. Nicæn. Paris. impress., cap. 3. p. 170.* [lib. ii. cap. 32. Harduin., tom. i. col. 437.] Acta ipsa e Vaticana bibl. prodierunt; latina facta sunt ab Alfonso Pisano et Rober. Balforeo Scoto.

[a] [Pro epist. pontif., lib. v. cap. 15. p. 508.]

[b] Hist. lib. i. cap. 4. [al. lib. x. ad calc. Euseb.]

[c] Lib. ii. cap. 14. [p. 315.]

[d] Verb. 'Paphnutius.'

[e] Lib. viii. [c. 19.]

[f] Cap. 'Nicæna,' dist. 31. [can. 12. col. 165.]

[g] [tom. i. col. 323.]

[h] Hist. eccl., lib. i. [cap. 6.]

[i] Cap. 122. [Max. bibl. vet. patr., tom. ix. p. 484.]

[k] Cap. 42. [tom. iii. col. 588.]

[l] Hæres. lxvii. [§ 8. p. 716 C.]

[m] Ἀγαπητὰς apud Epiphan., hæres. lxiii. [p. 520 sq.]

[n] Epist. lxii. [al. epist. iv. p. 7.]

[o] Orat. xvii. et orat. xviii. edit. Savil. [ed. Ben. tom. i. pp. 228, 48 sqq.]

them in some homily he made against those that brought in such women. They were 'the companions of their single life;' so Budæus renders the word: but it was usual amongst the Christians of those ages, virgins to bring in men, and monks to bring in women: but these were condemned by the council of Nice; who yet did not prevail, but that they who might have wives or husbands had rather have such friends and companions, which nevertheless gave infinite scandal and reproach. S. Gregory Nazianzen[p] speaks of them with no good will or commendations at all,

Τοὺς δὲ συνεισάκτους, ὡς δὴ φάσκουσιν ἅπαντες,
οὐκ οἶδ' εἴτε γάμῳ δώσομεν, εἴτ' ἀγάμους
θήσομεν, εἴτε μέσον τι φυλάξομεν· οὐ γὰρ ἔγωγε,
κἂν με λέγητε κακῶς, πρᾶγμα τόδ' αἰνέσομαι.

He neither knew how to call them[q], whether married or unmarried, or between both; but at no hand was that kind of life to be commended: but much less was it to be endured that men by new laws should be crushed to death or danger under an intolerable burden. This was the sense of the Nicene council. And the same thing was affirmed by Dionysius bishop of Corinth to Pinytus bishop of Gnossus[r], μὴ βαρὺ φορτίον ἐπάναγκες τὸ περὶ ἁγνείας τοῖς ἀδελφοῖς ἐπιτιθέναι, 'the heavy yoke of abstinence ought not to be imposed upon the brethren.' And of this the chancellor of Paris[s], a good man and a wise, discourses gravely. 'Christ our most wise lawgiver hath left rituals or judicials to their choice of whom he said, "He that heareth you heareth Me;" but yet so that they should know they are set over others for edification, not for destruction: and that they should judge according to the law of God, which is the general rule for all the professors of christian religion under Christ who is their general abbat; not enlarging it, not restraining it, or making it harder than Christ expressed it when He said 'His yoke is easy and His burden light.' For the prelates of the church have not power to bind their subjects to any things which are not delivered in the evangelical law professed by all Christians; they have no other authority than abbats have over their monks, who, according to the doctrine of S. Thomas and other doctors, cannot command their monks any other thing than what they have professed in their rule.' Now whether this be a burden or no will need no enquiry, when there is not in all the laws of God so much difficulty as in this very thing; insomuch that without a special gift of God it is impossible. I need not to prove this tell the sad stories of some saints who have fallen foully by the solicitations of their own nature; or how that youth, in which age many enter into holy orders, is a state of flames and danger; that S. Hie-

[p] [Epigr. xv. tom. ii. p. 1170.]

[q] Videat lector qui velit plura de sensu hujus vocabuli et canonis, Gabrielem Vasquium in 3. disp. 247. c. 4. [tom. iii. p. 748.] et Michaelem Medinam lib. ii. de continentia, c. 21. [p. 83. fol. Ven. 1569.] et Georgium Calixtum de conjug. cleric., p. 174. [4to. Helmst. 1631.]

[r] [Apud Euseb. H. E. iv. 23. p. 186.]

[s] De vita spirit. animæ. [ubi supra.]

rome[t] complains of it in his own particular, *Scitis lubricum adolescentiæ iter, in quo et ego lapsus sum,* he lost his glory of a virgin body when he was young: but I consider that those persons who have undertaken it, and had eminent graces, and were persons of rare and exemplar sanctity, yet could not preserve their virgin without almost destroying their body. Evagrius the priest used to go into a well in a winter's night, S. Bernard into a lake, to cool their burnings: S. Francis used to roll his naked body in snows, S. Homar in nettles, S. Benedict upon thorns, S. Martinian upon burning coals, to overthrow the strongest passion by the most violent pains. And were not that law intolerable that should command all ecclesiastics to do such things? they must do these or worse: I speak of those who have not the gift of continence. For to say that all men have it, or may have it if they will labour and pray for it, is to speak against reason and scripture and experience[u], It is easier to give our bodies to be burned for religion, than to live innocently in the state of perpetual burning: and supposing those saints now enumerated did by these violent remedies keep themselves from pollution, yet it is not certain that they took the better part when they chose ustulation before marriage, expressly against the apostle, who not only said, that it is better to marry than to fornicate, but, 'better to marry than to burn:' and that these violences did cure their burning, is so false, that they do suppose them afflicted with burnings, and that therefore they were constrained to use violent remedies; for those which men invent are infinitely worse than that which God hath appointed; so easy it was by marriage to cure what they found scarce possible to keep from the extremest mischiefs, but not possible to do in all degrees by mortifications. And therefore S. Hierome[x] speaking of virgins that did not do honour to their virginity by real continence, he advised them *ut aut nubant si se non possunt continere, aut contineant si nolunt nubere,* 'that they would contain if they will not marry, or marry if they cannot contain:' not only if they cannot contain from outward acts of uncleanness, but even from the secret desires of it, and from burnings. *Quid enim prodest,* saith he[y], *corporis pudicitia animo constuprato?* The chastity of the body is of no profit if the desires be burning and dishonest.

— Casso saltem delectamine
Amare . . quod potiri non licet.

So the burning is well described in the comedy[z]. *Uri est illegitimo coitu aut fœdis cogitationibus se polluere,* said Alfonsus Virvesius[a], 'to burn, is to pollute ourself with unlawful mixtures, or with filthy thoughts;' and these desires are not to be cured by mortifications

[t] Epist. xliii. ad Chromatium. [al. vii. tom. iv. part. 2. col. 14.]
[u] [1 Cor. vii. 7; Matt. 19, 11.]
[x] Ad Demetriad. virgin. [epist. xcvii. tom. iv. part. 2. col. 796.]
[y] In Jeremiam, lib. i. cap. 7. [tom. iii. col. 565.]
[z] [Incert. ad calc. Apul., p. 848.]
[a] Philippica 18. [adv. Luther., p. 257. 4to. Antv. 1541.]

and corporal austerities. *Nella guerra d' amor chi fuge vince,* saith the Italian proverb[b]. There is no contesting against this passion; even to dispute against it is a temptation, even to fast and to be hungry does enkindle the flame. *Fames et sitis exasperat et incendit animos,* saith Seneca[c], 'hunger and thirst make a man angry:' and anger and lust are fed by the same fuel.

——— mea cum deferbuit ira
Nolo prognatam consule[d]. ———

A spare and temperate diet gives no extraordinary maintenance to the desire, and therefore it was advised and practised in all ages: but there is enough of desire in ordinary; even that which maintains health will keep up that natural desire; and that which destroys health, destroys charity, and hinders us more in the service of God than it can set forward. And S. Hierome[e] says that he had known them of both sexes who have by too much abstinence turned mad and lost their wits. They that from God's mercy have received strengths to live singly and purely may use it as it serves best for God's glory and the interest of their souls, and their own intermedial comforts. But it is to be considered, that it is not only a gift of God that some men can contain, but it is a peculiar gift that they will: and is observed by wise and good men, that this desire hath or hath not respectively been inspired by the spirit of God in several ages of the church according to their present necessities; and when God gives the gift, then every thing will help it forward. But in the present manners and circumstances of the world, as there is no public necessity of it, so there is no great care taken to acquire it; for there where the unequal laws of men have brought a necessity upon their clergy, it is with them as with those of whom Epiphanius[f] complains, *Ut ne confundantur apud homines occulte scortantur, et sub solitudinis aut continentiæ specie libidinem exercent,* 'they pretend purity in public, and fornicate in private.' And it is certain that such courses are not fit means to invite the spirit of purity to invest and adorn the church. Neither is prayer a certain way of obtaining this gift, any more than of the gift of a healthful or a strong body; for God requires it of none of us directly; if accidentally He does require it, He will give him wherewithal: but therefore the apostle does not say, 'but if a man does not contain,' let him pray, but 'let him marry.' It is sufficient that God hath given a remedy that is easy and infallible to all that love God; and it is best to use that remedy which is best, and was by the best physician provided for all that need. *Oportet compati et commetiri doctrinam pro virium qualitate, et hujusmodi qui non possunt capere sermonem de castitate, concedere*

[b] [Gruter. floril. eth. polit., tom. i. part. 2. p. 164.]
[c] [De ira, lib. iii. cap. 9. tom. i. p. 110.]
[d] [vid. Hor. sat. i. 2. 70.]
[e] Ad Demetriad., epist. viii. [al. xcvii. tom. iv. part. 2. col. 794.]
[f] Hæres. lx. [leg. lxi. p. 512.]

nuptias, said S. Cyril[g], 'every one's strength must be measured, and so fit our doctrines to their proportions, and to grant marriages to them who cannot receive the word of continence.' And therefore what S. Austin[h] said of widows may be exactly applied to ecclesiastics, 'There are some that call them adulterous if they marry, and so pretend themselves purer than the doctrine of the apostle, who, if they would confess their name, *mundanos potius se quam mundos vocarent*, they would prove to be servants of interest rather than of purity. For they compel the widows (the ecclesiastics) to burnings, because they suffer them not to marry. But we are not to esteem them to be wiser than the apostle Paul, who saith, "I had rather they should marry than burn."' And like to this is that of S. Hierome[i], *Si quis consideret virginem suam, i. e. carnem suam, lascivire et ebullire in libidinem, nec refrænare se potest, duplex illi incumbit necessitas, aut capiendæ conjugis, aut ruendi*, 'he that considers his virgin, that is, his flesh, and observes it troublesome and boiling into desires, and cannot refrain himself, hath a double necessity upon him; either he must take a wife, or he must perish.' And therefore they that pretend the gift of continence is in every man's power, should do well to give God thanks that they find it so in their own, but yet they should also do well to believe others who complain that they have it not. S. Bernard's[j] wish was something to the same purpose of charity and security. *Utinam qui continere non valent, perfectionem temerarie profiteri, aut cœlibatui dare nomina vererentur; sumptuosa siquidem turris est, et verbum grande, quod non omnes capere possunt*, 'I wish that they who cannot contain would be afraid to profess perfection, and undertake single life: for this is a costly tower, and a great word that all cannot receive.' Æneas Sylvius[k] having gotten a lady with child, to his father that was troubled at it he replies, *in sua potestate non fuisse ut vir non esset*, he could not help it: and when Origen had resolved to live continently he found no course but one would do it, even by making it impossible to be otherwise; and he was followed by many, particularly by the Valesi: and Leontius[l], who was afterwards chosen bishop of Antioch by the Arians, having a woman in his house, one of the συνείσακτοι of which I spake before, being commanded to put her away, emasculated himself that he might have leave to sleep with her: but that uncharitable folly produced a good law against it. For what chastity is that, or what service of God is it for a man to offer to God a single life when he hath made himself naturally impotent? It is (that I may use S. Basil's[m] expression) as if we should commend a

[g] In Levit. l. 15. [?]

[h] Lib. de agone Christian., cap. 31. [tom. vi. col. 260 F.]

[i] Contra Jovin., lib. i. [tom. iv. part. 2. col. 158.]

[j] De convers. ad clericos, cap. 29. [col. 858 B.]

[k] Epist. xv. [p. 511.]

[l] [Athanas. de fuga sua, § 26. tom. i. p. 335 E; et hist. Arian., § 28. tom. i. p. 360 B.]

[m] Extrem. libro de vera virgin. [§ 64. tom. iii. p. 648 B.]

horse for not hurting any man with horns. But I observe it for this purpose, to represent upon what terms the gift of continence was to be obtained by some who would fain, but by this act shewed plainly that they could not.

> Propterea leges quæ sunt connubia contra
> Esse malas . . . prudentia patrum
> Non satis advertit . . . quid ferre recuset,
> Quid valeat natura pati: cervicibus (aiunt)
> Hoc insuave jugum nostris imponere Christus
> Noluit: istud onus quod adhuc quamplurima monstra
> Fecit, ab audaci dicunt pietate repertum [n].

And therefore those laws that command single life to so many thousands of priests, Italians, Spaniards, Frenchmen, which are none of the most continent nations of Europe, are a snare to those that cannot keep them, and a burden to them that would, and intolerable to both. So Origen[o] complains of some imperious and imprudent persons who in his time would be commanding single life and virginity; *Non solum quæ docent non faciunt, sed etiam crudeliter et sine misericordia injungunt aliis majora virtute ipsorum, non habentes rationem virium uniuscujusque,* 'they not only do not what they teach, but cruelly and unmercifully enjoin to others things greater than their strength, not regarding the measure of every one.' For it is a burden bigger than the weight of all the laws of Jesus Christ put together, except to such persons who are eunuchs by nature, or have received a particular gift of God; of which they may make use as they find other things concurring. For to be able to contain is one gift, and to be willing is another; and after all, that this can promote any end of religion is but accidental, and depends upon a special providence and economy of affairs. It may be useful in some times, and to some persons, and to some purposes; but of itself it is no act of religion, no service of God: and that's the next consideration.

§ 18. 3) The law of celibate is an unreasonable law, and besides that it does very much mischief to souls, it does no good at all. For if single life have in it any greater purity or spirituality than chaste marriages, yet even that single life is more acceptable when it is chosen and voluntary; and if it be involuntary and constrained, it is not pleasing to God: so that the law in this case does effect nothing but this, that they who are willing may lose something of the reward, or may be uncertain whether they do or no; and they that are unwilling are constrained either to hypocrisy, which will bring them an evil reward, or to a burden and slavery which shall bring them none at all. But that which I intended is this,

§ 19. 4) That all this stir is to no purpose; for virginity is not more holy than chaste marriage, and the one does not more advance religion than the other directly, but by accident, and in some cir-

[n] Baptista Mantuan. in vita Divi Hilarii. [lin. 20. fast., lib. i. in Jan.]
[o] In Matth., tract. xxiv. [tom. iii. p. 836 F.]

cumstances, and as an instrument fitted for use in its own time. For as S. Austin[p] observes well, 'S. Paul does modestly dehort from marriage, not as from an evil, but as from a burden:' neither is his advice for all times, but for that present necessity; neither is it to the clergy, but to all Christians; neither is it for religion, but for convenience; neither was it from the Lord, but from himself; nothing of the gospel or spirituality, but a matter of prudence, and the exterior conduct of affairs. For τίμιος ὁ γάμος, and κοίτη ἀμίαντος, 'marriage is honourable,' it is so to all, and such mixtures have in them nothing that defiles, and he that is perfect in his constitution, if he be also so much a virgin as to have nothing that defiles, is a rare person, but it may be not to be found; but if he be, yet he does arrive but to that state of things in which the married man is, even when he does actually use his greatest liberty he is ἀμίαντος, 'undefiled.' Which thing if the zealots in some of the first ages of the church had rightly observed, they would not have been so fierce for single life upon the account of heretical principles. For they did it because they supposed marriage to be a pollution: and if they did not expressly condemn it upon that stock, yet they secretly suspected it, as not being confident of the truth of the apostle's words, but suffering themselves to be a little abused by heretical sermons, though they did not openly join in their communions and professions. The council of Gangra notes such persons as these, that refused the communion from the hands of a married priest; but in the fourth chapter pronounces *anathema* against them: and S. Ignatius[q] says that they who call the society of married pairs corruption and pollution, have the devil that great apostate dwelling in them. For what state of life can be purer than that which is undefiled? and from whence shall we take the measures of purity but from the fountains of our Saviour, from the holy scriptures, the springs of salvation? But to this the first ages of the church gave apparent witness. *Perfecti Christiani edunt, bibunt, contrahunt matrimonium,* said Clemens Alexandrinus[r], 'perfect Christians eat and drink and make marriages:' and therefore the τελείωσις ἱερατικὴ, 'the perfect state of orders,' is not at all impugned or diminished by marriage. Sozomen[s] tells of bishop Spyridion, ἐγένετο γὰρ οὗτος ἄγροικος, γαμετὴν καὶ παῖδας ἔχων· ἀλλ' οὐ παρὰ τοῦτο τὰ θεῖα χείρων, 'he was a plain man, he had wife and children, but not at all the worse, not at all hindered in divine things.' The same also is said of Gregory bishop of Nazianzum[t], the father of S. Gregory the divine and S. Basil, *Etsi matrimonio se vinxit, ita tamen in eo vixit ut nihil propterea ad perfectam virtutem ac philosophiam consequendam impediretur*[u]: 'he com-

[p] De S. virginit., cap. 16. [tom. vi. col. 347 D.]

[q] Ad Philadelph. [interpol. § 6. p. 79.]

[r] Strom., lib. vii. [cap. 11. p. 869.]

[s] Lib. i. c. 11. [init.]

[t] [Rather by Greg. Naz. of S. Basil the elder.]

[u] Greg. Naz. [monod. de Basil. inter opp. Basilii.] verba ex transl. Volaterrani. [tom. i. p. 3. fin. ed. Wolfgang. Musc. fol. Bas. 1540.]

ported himself so in the state of marriage, that he was not at all hindered for obtaining the perfection of virtue and (christian) philosophy:' and indeed what should hinder him? for marriage does not. *Matrimonium non solum nihil nobis obstat ad philosophandum Deo, si voluerimus esse sobrii, sed et magnam adfert consolationem: comprimit enim insanum naturæ impetum, nec turbari sinit quasi mare, sed efficit ut scapha feliciter in portum appellet; et ideo Deus consolationem hanc tribuit humano generi*[v], 'for if men will be sober, marriage is not only no hindrance to christian philosophy, but also brings great aids and comfort: for it represses the mad violences of nature, and causes that we be not troubled like the enraged sea, but makes the vessel arrive safely to her port; and therefore God hath given this comfort to mankind.'

§ 20. For although it be true that, as S. Paul[x] says, the "married cares for the things of the world, the unmarried for the things of the Lord;" he, how he may please his wife, this, how he may be holy both in body and in spirit; yet this is so far from disparaging holy marriage, or making it less consistent with the dignity and offices ecclesiastical, that in the world there is not a greater argument to the contrary. For consider where every one's trouble and where their danger lies. The married hath more necessities and more affairs in the world, and relations to look after: which if he well provides for according to his power, he hath indeed suffered some secular trouble; but he hath done his duty, and he is safe. But the unmarried is alone, and without those relations; and therefore they may if they will let the things of the world alone, and mind the present employment, which then was the ministries and attendances evangelical. But though they have less care of the things of this world, yet their care which lies in another scene is a good care indeed, but it is very great and tender, and hath in it very great danger.

——— pœnæque graves in cœlibe vita[y]

The unmarried takes care how she may be holy or clean in body and spirit. And this is a care not only of greater concernment than that of secular supplies, but to most persons of extreme difficulty and danger. For it is to no purpose to be unmarried, unless they remain pure in body and in spirit, that is, be free from carnal desires as well as unclean actions: and how great a care is required to this I need not say, because all men that have tried it know: but this care the married need not know any thing of; for they have by God a remedy provided for them, and they are in the holy state of marriage, without that care, holy both in body and mind; so that it is easy to say where the advantage lies. The one takes care to avoid want, the other to avoid damnation. The one hath troubles of this world, the

[v] S. Chrysost. hom. xxi. in Gen. [tom. iv. p. 186 E.]

[x] [1 Cor. vii. 34.]

[y] Auson. [idyll. xv. carm. 362. 6.]

other hath dangers of the other. The hardest province which the married man hath is how to please his wife; but his affairs are so well ordered, that he hath not such difficulties to please God as the other hath: which thing was long since observed by S. Gregory Nazianzen[z], that indeed single life is higher and better (if it be pure and undefiled) but it is more difficult and more dangerous; and marriage, which looks not so splendidly, is yet much more safe. But this comparison is true between persons married, and the unmarried that have the gift of continence; for even that gift does not exempt them from great dangers and great labours. But if there be any burning, if there be a fire within, it is ill dwelling in the house where there is no chimney; for that the smoke will fill every corner of the dwelling, and at least make a perpetual trouble. But between the married, and the unmarried that hath not the gift of continence, which is far the greatest part of mankind, there is no comparison at all. And therefore though in respect to that conjunction of affairs, to the beginnings of a persecuted religion, in which many of them were to live an ambulatory life, and suffer the spoiling of their goods, and be thrust out of their houses, the apostle had great reason to take care lest by the greatness and superfetations of trouble they should be tempted to forsake and be vexed out of their religion: yet abstracting from that consideration, the married estate is much more secure for the state of souls, *et propter eam quæ in nuptiis est animi tranquillitatem*[a], as S. Gregory Nazianzen affirms, and for that peace of mind which is in chaste marriages, and is not in the state of single life with them who are perpetually fighting with a dangerous enemy, who is not always resisted, and if he be, is not always put to the worst. And therefore it was rightly observed of S. Clemens Alexandr.[b], "As (single life, or) continence, so marriage also hath proper gifts and ministries which pertain unto the Lord:" but at no hand ought it to be admitted that marriage does hinder the service of the Lord; it sets it forward very much, but hinders nothing; it may be burdensome to those who are to travel and pass from country to country, but to them who fix in a place, and who attend the ministries of one people, it is no hindrance; and then to the direct service of God in our personal piety and spiritual safety it is a very great advantage: concerning which who please may read S. Gregory concerning his mother Nonna[c], and the epistles of Paulinus[d] concerning Amanda the wife of Aper, who were to their husbands admirable advantages both in the affairs of the world and of religion. *Sanctissimus Samuel filios genuit: non tamen justitiæ suæ merita minuit. . . Zecharias sacerdos vir justus in senectute sua genuit filium. . . Qua*

[z] In fun. Gorgon. [orat. viii. § 8. tom. i. p. 222.]
[a] [ibid.]
[b] Stromat., lib. iii. [cap. 12. p. 546.]
[c] Greg. Naz. [ubi supra, p. 220, et orat. vii. § 4. p. 200.]
[d] Inter epistt. Augustini, epistt. xxvii. et xxix. [al. epistt. xxxi. et xxxii. in max. bibl. vet. patr., tom. vi. p. 215 sqq.]

ergo ratione accusatur, quod minime obesse probatur? so S. Austin[e]. To which add the instance of S. Chrysostom[f] upon those words of Isaiah, "I saw the Lord," *Quis ista loquitur? Isaias ille spectator cœlestium seraphim, qui cum conjuge commercium habuit, nec tamen extinxit gratiam.* Samuel the most holy prophet, and Zechary that just priest, and Isaiah that seer who saw the celestial seraphim, were not hindered from their greatest graces, favours, and perfections by the state and offices of marriage. The event of this consideration I represent in the words of the same excellent doctor, *Quamvis nuptiæ plurimum difficultatis in se habeant, ita tamen assumi possunt ut perfectiori vitæ impedimento non sint*[g], 'though marriage have in it very much difficulty' (in respect of domestic cares), 'yet it may be so undertaken that it may be no impediment to a life of perfection.' For even in respect of secular cares and intrigues of business, the single life, which seems in this to have advantage, is not always found so innocent and disentangled; and yet sometimes even in this very regard a married man hath or may have advantages and ease and liberty: *Videmus virgines de sæculo cogitare, et matrimonio junctos dominicis studere operibus,* said S. Ambrose[h], 'men of single lives take care for the world, and we see them that are married study the works of the Lord.' And if it were otherwise, yet a law to command single life were very imprudent; unless they could secure that they who have no wives shall have no children. But as Lipsius[i] said of the Roman senate, who forbad their soldiers to marry, *a Junone arcebant eos, non a Venere, Romanæ leges,* 'the Roman laws forbad Juno to them, not Venus,' for *contubernii militibus semper jus,* 'the soldiers always might have women, but no wives;' so it is amongst the Roman prelates too much: but unless this also were so denied them, that they could have no children, or that they who have no children shall not be solicitous to raise a poor family, or to increase a great, the law were very unreasonable as to this very pretence. For that things are otherwise there where single life is enjoined is too apparent, and it is complained of by Alvarus Pelagius[k] three hundred years ago, and by Platina[l] and Bonaventure[m], and it is notorious in all the popes; divers particulars of which in the instance of Sixtus quintus are to be seen in the excellent Thuanus[n]. I end this consideration with the excellent words of Salvian[o], *Novum prorsus est conversionis genus: licita non faciunt, illicita committunt. Temperant a concubitu, et non temperant a rapina. Quid agis stulta persuasio? pec-*

[e] Quæst. Vet. et N. test., q. cxxvii. [tom. iii. append. col. 142 B.]

[f] [Hom. iv. tom. vi. p. 123 C.]

[g] In 1 ep. ad Tim., hom. x. [tom. xi. p. 599.]

[h] In 1 Cor. vii. [tom. ii. append. col. 137 E.]

[i] Ad xiv. annal. n. 74. [p. 443. ed. 12mo. Lugd. 1598.]

[k] Lib. de planctu eccles., lib. ii. art. 15. A.D. MCCCXXX. [fol. 117. Lugd. 1517.]

[l] In Johann. xvi. [p. 141. fol. Colon. 1574.]

[m] 4. dist. xxxvii. art. 1. q. 3. [tom. v. p. 19.]

[n] Hist., lib. c. [tom. v. p. 19.]

[o] Lib. v. de provident. Dei. [Max. bibl. vet. patr., tom. viii. p. 362 A.]

cata interdixit Deus, non matrimonia: 'this is a new and a strange kind of conversion. They will not do lawful things, but they commit unlawful: they abstain from marriage, but not from rapine. O ye fools, why are ye so persuaded? God hath forbidden sins, not marriages.'

§ 21. Although these considerations are a sufficient explication of this instance of the rule, and verify the first intention, that single life ought not by a law to be enjoined to any one order of men; yet because the instance is of great concernment beyond the limits of this rule, I add that the apostles and the first ages of the church not only forbad that the clergy should put away their wives, but left it indifferent for any man or any order of men to marry: and therefore that it ought not now to be done by the present guides of churches, who have less reason so to do; and if they had a greater reason, yet they have a less authority. But Christ and His apostles left it free. Of this besides the matter and evidence of fact, there being no law of Christ or canon of the apostles to restrain it, but a plain supposition of liberty, and intimation of the thing done in the epistles to Timothy and Titus, there needs no other testimony but that of Gratian[p]:—*Copula sacerdotalis, vel consanguineorum, nec legali, nec evangelica, nec apostolica auctoritate prohibetur,* 'neither the Old testament nor the New, neither Christ nor His apostles, have forbidden the marriage of priests.' To which agrees that of Panormitan[q]; *Continentia non est de substantia ordinis, nec de jure divino,* 'to contain from marriage is not of divine appointment, nor necessary to them that are in holy orders.' The same also is affirmed by Antoninus, as who please may see *in Summa, part.* 3. *tit. i. c.* 21[r].

§ 22. Now then nothing remains to be considered but the practice of the church, which how far it can oblige I have already discoursed; but suppose it might in other cases, yet for the reasons above described it ought to be altered in this; for if such a law may not bind, much less can the practice; and yet if the practice might, here was no catholic practice. For as for the whole Greek church, the practice of that is drawn into a *compendium* by pope Stephen[s]:—*Aliter se orientalium traditio habet ecclesiarum, aliter hujus S. R. ecclesiæ: nam illarum sacerdotes diaconi et subdiaconi matrimonio copulantur:* 'the tradition of the eastern churches is otherwise than that of the Roman church; for their priests and deacons and subdeacons are joined in marriage.' I shall therefore add no more to this confession but the canon of the council of Ancyra[t], which orders that if deacons in their ordination will profess that they cannot contain, and that they intend to marry, they may. But if then they profess otherwise, and do against their profession, they must cease from their ministry.

[p] [Gratian. decret., part. 2. caus.] xxvi. qu. 2. cap. 'Sors.' [cap. 1. col. 1585.]

[q] De cleric. conjug. 'Cum olim.' [§ 5. fol. 16.]

[r] [col. 101. ed. fol. Veron. 1740.]

[s] [Gratian. decret., part. 1.] distinct. xxxi. cap. 'Aliter.' [cap. 14. col. 167.]

[t] Dist. xxviii. cap. 8. [col. 149.]

And the practice is to this day, that the Greek and all the eastern priests are, if they please, married men, and most of them actually are so: though in the eastern churches they always did exhort their clergy to continence, yet they left it to their liberty, and they always took it.

§ 23. In the Latin church, from the time of pope Siricius and the second council of Arles, which Binius makes about the same time, at the end of the fourth age after Christ, there were some canons provincial enjoining single life to the clergy; but the practice was ever against the canon: and as for the first four hundred years or thereabouts, all had liberty to be married if they pleased, so even afterwards they would take it as they saw cause. This we find in S. Hierome[w], who to Jovinian, objecting the marriage of Samuel, answers, that this was no prejudice to the honour of the virgin state, *quasi non hodie quoque plurimi sacerdotes habeant matrimonia, et apostolus describat episcopum unius uxoris virum;* 'for the apostle describes a bishop the husband of one wife, and even at this day most priests are married.' S. Hierome did not contend that all priests ought to be virgins; but that if they that could contain would, it were much better. But by this the matter of fact against the law was evident. S. Ambrose[x] tells that in most remote or private churches the priests did use marriage: *In plerisque abditioribus locis, cum ministerium gererent vel etiam sacerdotium, filios susceperunt.* The clerical marriages were in his time almost universal: and therefore many endeavoured to persuade single life as much as they could, and from arguments they came to affirmations, and so to laws by little and little; but did not prevail. For when Petrus Damiani was sent from Rome into France to persuade the priests to put away their wives, they defended themselves with the canon of the council of Tribur in Germany, and with the words of S. Paul[y], "To avoid fornication, let every man have his wife;" to which the legate knew not what to answer[z]. And when in the year MLXXIV. pope Gregory the seventh sent fierce letters to Germany about the same affair, the archbishop of Mentz, to whose conduct the business was committed, did publish the letters, but durst not verify them; and neither by fair means nor by foul could cause the priests to put away their wives. And in England till the year MC. it was not prohibited to the clergy to marry, saith Henry of Huntingdon[a]: but then Anselm endeavoured to put the pope's letters in execution; and twenty-five years after the cardinal of Crema[b] was sent over to the same purpose: but because he was taken in bed with an harlot, he got nothing but shame and money,

[w] [Contr. Jovin., lib. i. tom. iv. part. 2. col. 165.]

[x] De offic., lib. i. cap. ult. [tom. ii. col. 66 D.]

[y] [1 Cor. vii. 2.]

[z] Baron., A.D. MLIX. [n. 54. tom. xvii. p. 165.] et A.D. MLXV. [n. 2. p. 271.]

[a] Apud Baron., A.D. MLXXV. [n. 16, p. 411. fol. Luc. 1745.]

[b] Matth. Paris, hist. Anglor., A.D. MCXXV. [tom. i. p. 70 ed. fol. Lond. 1640.]

and so went away. But at last[c], after the attempts and pressures and tyranny and arts of a hundred and thirty years' continuance (for it began in DCCCCLXX, and was not finished till A.D. MC, as Polydore Vergil[d] computes it), the clergy was driven from their chaste marriages, and they took themselves to concubines, whom they could change or multiply, and they found themselves undisturbed in that; and so they rested, till God being long provoked by their impurest services, awakened christian princes and priests into liberty and holiness and reformation. For amongst the canons which are called apostolical, the sixth severely forbids bishops or priests upon pretence of religion to put away their wives, according to the words of Christ[e], "What God hath joined, let no man put asunder;" and the words of the apostle[f], "Defraud not one another, unless it be by consent, and for a time." And therefore the church of Rome, which makes orders to dissolve marriage, and commands priests which before were married to depart from their wives, speaks and does against the practice of the ancient churches, and against the decrees of councils, and the canons of the apostles, and the express laws of Jesus Christ. I end this with the saying of those in Mantuan[g],

> Tutius esse volunt qua lex divina sinebat
> Isse via, veterumque sequi vestigia patrum,
> Quorum vita fuit melior cum conjuge, quam nunc
> Nostra sit exclusis thalamis et conjugis usu.

The old primitives and holy bishops and priests in the first ages lived better with their wives than now-a-days they do without them; and therefore it were better to tread in their footsteps, and to walk in that way to which we are pointed by the law of God.

§ 24. One thing I am to add which is of material consideration. For every one observes in the story of the church, that even then when they did permit the bishops and priests to live with their wives and to get children, yet the church did even then forbid bishops or priests to marry after their ordination; and therefore many suppose that we might at least comply so far with the catholic church, according as it is set down in the constitutions apostolical attributed to

> [c] O bone Calixte, nunc omnis clerus odit te.
> Nam olim presbyteri solent uxoribus uti.
> Id prævertisti quondam cum papa fuisti:
> Ergo tibi festum nunquam celebrabit honestum.

Sic non nimis facunde, sed vere nimis questus est olim non nemo.—[Paulo aliter Anglicus quidam apud Baleum, script. Britann., cent. ii. p. 175.]

[d] Lib. vi. hist. Angl. A.D. DCCCCLXX. [p. 119. ed. fol. Bas. 1570.]—Vide 27. q. 1. cap. 'Ut lex.' [Gratian. decret., part. 2. caus. 27. qu. 1. cap. 40. col. 1635.] et Clem. cap. 'Literas,' de filiis presbyter. [Greg. IX. decret., lib. i. tit. 18. cap. 14. col. 273.] et Innocent. cap. 'Ut clericorum,' de vita et honestate cleric. [lib. iii. tit. 1. cap. 13. col. 931.]

[e] [Matt. xix. 6; Mark x. 9.]

[f] [1 Cor. vii. 5.]

[g] [Fast. lib. i. in Jan. vit. S. Hilar., lin. 27.]

S. Clement[h], *Non licere autem iis, si post ordinationem sine uxore fuerint, ad nuptias transire: vel si uxores habuerint, cum aliis conjungi;* but they must be content with her whom they had at the time of their ordination; but after orders they must not marry: and Paphnutius in the Nicene council[i] said that they did not do it, and left it as supposed that it ought not. Of this I do not know any one that hath given a reason, or considered it apart to any purpose; and therefore it will not be useless or unpleasant if I give a short account of it.

§ 25. 1) Therefore the primitive church chose her priests and bishops commonly of great age, of known virtue and holiness. They were designed to a public and dangerous employment, for some whole ages they were under persecution, and the way of the cross was a great deletery to flesh and blood; and therefore they might the rather require it of them whom in these dispositions they found fit to be taken into an employment which would require a whole man, all his time and all his affections. Now if we consider that the married priests and bishops were commanded to retain their wives, and the unmarried had been tried to be of a known and experienced continence, they might with much reason and great advantages require that they should so remain; that is, they might ask their consent, and might trust their promise: for here was liberty, and but little danger. The priests were few, and the unmarried much fewer, and their age commonly such as was past danger, and the public affairs of the church required it, and the men were willing; and then all was right.

§ 26. 2) The Greek church, and generally the churches of the east, did by custom and tradition oblige their priests to single life, if in that state they were ordained, because they took care that if they could not contain they should take a wife before their orders, immediately if they pleased, and then enter into the priesthood; as appears frequently in the Greek laws and canons, and particularly in the third novel constitution of the emperor Leo the sixth. So that this was but a circumstance of law, introduced for that which they apprehended to be decent: and in matters of decency, opinion is the only measure. But if they might marry immediately before their ordination and live with their wives, then it is evident they did not believe that either the offices or the state of marriage were against the offices and state of priesthood. And this is affirmed by Cajetan[j], *Nec ordo in quantum ordo, nec ordo in quantum sacer, est impeditivus matrimonii,* 'neither the order nor the appendent holiness,' that is, neither the office nor its decency, 'are impeded by[k] holy marriages.' And therefore he adds, that 'it can never be proved by reason or by authority, that if a priest does contract marriage, he does absolutely

[h] Lib. vi. const. apost., cap. 17. [p. 350.]

[i] [ubi supra.]

[j] In quodlib. contr. Lutherum. [contr. Paris., tom. i. opusc. 27. fol. 62 b.]

[k] [rather, 'impediment to.']

sin; because the priesthood does not dissolve the marriage, whether contracted after or before; *standō tantum in iis quæ habemus a Christo et apostolis*, that is, if we keep ourselves within the limits of Christ's commandments and the doctrine apostolical.' And that's well enough; for if any church or all churches did otherwise, the custom was not good for many reasons: it did dishonour to marriage, it made it to be secretly suspected of some uncleanness, it gave too much countenance to heretics who disparaged it, it made a snare to those who promised continence and found it difficult or impossible, and at last it came to an intolerable mischief in the church of Rome, it brought in divorces, which God hates; for they teach that orders do dissolve marriage, and that which Christ only permitted in the case of adultery, they command in the case of ordination.

§ 27. 3) But because there are some persuasions that will not be moved unless they be shewn some precedents and practices of the primitive church, and will always suspect it to be ill for the superior clergy to marry after ordination, unless you can tell them that some good men did so before them, for they rely more upon example than upon rule; therefore I shall represent, that although the ancient canons and practices did generally enjoin their clergy not to marry after orders, (before orders they might,) yet this thing did not prevail, but deacons, priests, and bishops, good men and orderly, did after ordination use their liberty as they found it necessary or expedient. This I have already remarked in the case of deacons, who are permitted by the council of Ancyra[l] to marry after ordination, if at their ordination they will not profess continence. But bishops and priests did so too: which is plainly gathered from those words of S. Athanasius to Dracontius[m], who refused to be made bishop because he impertinently thought it was not so spiritual a state as that of monks, since he saw the bishops married men and full of secular affairs: S. Athanasius answered him, that he might be bishop for all that, and keep on his way as he was before: for if that did hinder him, he let him know that all bishops did not enter into the married estate, nor all monks abstain. *Multi quoque ex episcopis matrimonia non inierunt; monachi contra liberorum patres facti sunt*, 'many bishops did not contract marriages.' Now if none did, his answer to Dracontius had been more full, and would not have been omitted; but therefore it is manifest that in his time some did. But Cassiodore[n] gives an instance in a bishop and martyr that took a wife but a little before his martyrdom, Eupsychius of Cæsarea in Cappadocia: *In illo tempore ferunt, martyrio vitam finivisse . . Eupsychium Cæsareensem, ducta nuper uxore, cum adhuc quasi sponsus esse videretur*. He was first a priest in Cæsarea, but afterwards he

[l] Cap. 10. [tom. i. col. 276.]
[m] [tom. i. p. 268 B.]
[n] Tripart. hist., lib. vi. [cap. 14.—Sozom. hist. eccles., lib. v. cap. 10; Niceph. hist. eccles., lib. x. cap. 10.]

was a bishop; and so he is called by S. Athanasius[o], who mentions Sylvester and Protogenes bishops of Dacia, and Leontius and Eupsychius bishops of Cappadocia, of which Cæsarea was the metropolis. This Eupsychius having newly married a wife, while he was yet but as it were a bridegroom gave up his life in martyrdom for Christ. But this was no news in the Greek church; for pope Stephen having affirmed that the Greek priests, deacons, and subdeacons are joined in marriage, the gloss says[p], *Multi ex hac litera dixerunt quod orientales possunt contrahere in sacris ordinibus,* 'many from these words have affirmed that the easterlings can marry in holy orders.' And it is also added by the gloss upon the same distinction, that 'the Greeks in their ordinations do promise continence neither explicitly nor tacitly:' and if that be true, there is no peradventure but very many of them marry after their consecrations. But because the Latin lawyers and canonists are none of the best historians, we may better inform ourselves in this particular from the Greeks themselves: amongst whom we find that for almost two hundred years together after the synod *in Trullo*, the Greek priests had after their ordination two years' time for probation whether they could bear the yoke of single life, and if they could not, they had leave to marry. For although the canons *in Trullo* had permitted them only to stay with the wives they had married before orders, and commanded that they should take none after, yet the canon prevailed not, but the contrary custom of two years' probation lasted till the time of the emperor Leo the sixth, as appears in his third novel constitution before cited. The words are these[q], *Consuetudo quæ in præsenti obtinet, iis quibus in matrimonio conjungi in animo est concedit, ut antequam uxorem duxerint, sacerdotes fieri possint, et deinde biennium ad perficiendam voluntatem jungi matrimonio volenti præstituit.* They took their orders first, and then had two years' time to consider whether they would marry or no. Now this being the custom of the whole Greek church, in which the bishops because of the ordinations were engaged, it is evident it was not illegal or irregular, but an approved custom of the church; though before the end of two hundred years after the synod *in Trullo* it was decreed against by an imperial law. What became of it afterwards I have had no opportunity to enquire; but I find contrary relations by several persons. That which I most rely upon is the relation of Erasmus, who in his apology against the Parisians[r] says that in Venice he saw a Greek priest marry a wife: and in the history of Johannes Magnus[s] I find these words, *Wilhelmi cardinalis prima cura et intentio fuit revocare Suecos et Gothos a schismate Græcorum, in quod presbyteri et sacerdotes ductis publice uxoribus consensisse videbantur;* 'cardinal William endeavoured to

[o] Orat. contr. Arianos. [§ 8. tom. i. p. 278 C.]
[p] 'Dist. 31. c. 'Aliter.' [ubi supra.]
[q] [In corp. jur. civil. Gothofred.]
[r] [tom. ix. col. 903.]
[s] [Hist. Goth., lib. xix. cap. 15. p. 619. fol. Rom. 1554.]

recover the Swedes and Goths from the schism of the Greeks, to which they seemed to adhere when their priests and bishops did marry wives publicly. By which it appears the Greeks did so, since the others by so doing complied with them. And the metropolitan of Russia in Sigismundus Baro calls it a great error and sin in the Roman church that they reject the priests who marry wives according to the laws. But the matter is not great; for the church might do what they saw cause for.

§ 28. But in the Latin church it will be harder to find examples of priests marrying after orders. Not but that there were very many that did; but that they durst not be known to do it. But yet some notices we have even of this also. For pope Innocentius[t] the second observed that every where bishops and priests, and the religious professed did marry wives after they had purposed the contrary, and by a decretal restrains it. And Ivo bishop of Chartres[u] tells of a prelate that had two harlots; but (as it should seem) being weary of that life, he prepared matrimonial tables for a third: and he tells also of a canon in the church at Paris[x] who did actually contract marriage, and the bishop held it rate and firm, that it was good and could not be dissolved: and we find that Æneas Sylvius[y] being consulted by a priest that was in the snare, he advised him actually to take a wife and marry. For what should hinder? The law of the church was an evil law, made by an authority violent and usurped, insufficient as to that charge, it was not a law of God, it was against the rights and against the necessities of nature, it was unnatural and unreasonable, it was not for edification of the church, it was no advantage to spiritual life: it is a law that is therefore against public honesty because it did openly and secretly introduce dishonesty; it had nothing of the requisites of a good law, it had no consideration of human frailty nor of human comforts, it was neither necessary nor profitable nor innocent, neither fitted to time nor place nor person; it was not accepted by them that could not bear it, it was complained of by them that could; it was never admitted in the east, it was fought against and declaimed and railed at in the west, and at last is laid aside in the churches (especially) of the north, as the most intolerable and most unreasonable tyranny in the world; for it was not to be endured, that upon the pretence of an unseasonable perfection, so much impurity should be brought into the church, and so many souls thrust down to hell. And therefore when the Latin priests saw themselves so horribly ensnared, they did secretly corrode the net, which openly they durst not tear in pieces. And the case is clear. Dominicus a Soto[z] observing that the church did not for a long time permit priests to marry after orders, argues thus:

[t] 27. q. 1. cap. 'Ut lex.' [ubi supra.]
[u] Epist. cc. [p. 352.]
[x] [Epist. ccxviii. p. 379.]
[y] Epist. cccxxi. [cccvii.] ad Johan. Fontem. [Johan. Frundt., p. 809.]
[z] Lib. vii. de just. et jure, q. 6. art. 2. [fol. 251.]

'The church admitted married men to be priests, but did not admit priests to be married men, meaning afterwards: which thing,' saith he, 'relies upon no other reason but this, because they supposed the use of the marriage-bed to be inconsistent with the office and dignity of a priest or bishop. For if they who were bishops and priests might use marriage, what hinders them but that they might after orders enter upon marriage?' That's his argument. To which I reply, that it is true, the church, which was *æmula continentiæ*, 'desirous to promote continence,' did set it forwards where she thought she might with safety, and therefore enjoined her priests, which anciently could not be ordained till they were almost forty years of age[a], to remain in that state in which their ordination found them: though even this was a snare also, and could not be observed, and was not, (as I have proved,) yet this was not because they disapproved the conjugal society; for besides that the scripture gives it a title of honour, and calls it purity; it was also declared to be chastity in the Nicene council, who did therefore leave married priests and bishops to the use of it: and they who spake against the use of marriage in priests and refused to pray with married priests, were anathematized in the council of Gangra[b]. And it is evident that those who were admitted in the state of marriage to holy orders did *παιδοποιεῖν*, beget children. S. Gregory the divine[c] tells it of his father, Gregory Nazianzen,

Πατήρ σε λίσσεθ', υἱέων ὦ φίλτατε,
Πατὴρ ὁ πρεσβὺς τὸν νέον·
. . . . . .
Οὕπω τοσοῦτον ἐκμεμετρήκας βίον
Ὅσος διῆλθε θυσιῶν ἐμοὶ χρόνος.

That he said he had been in holy orders longer than the age of his sons, and yet he had also a younger son than this Gregory; for Cæsarius was his younger brother. Baronius contends fiercely against this instance to convince the son of a poetical fiction, or an hyperbole, or some other civil word for a lie. But let it be as it was; yet the thing itself was infinitely evident; for as Fabianus said, bishops and priests did for a thousand years together in the church live with their wives, *nulla lege prohibente*, 'no law forbidding it;' that is, no law in force; and the council of Constantinople[d] decreed, *Si quis præsumpserit contra apostolicos canones aliquos presbyterorum et diaconorum privare a contactu et communione legalis uxoris suæ, deponatur:* 'it is against the canons apostolical to forbid a priest or deacon the contact and society of his lawful wife; and he that shall presume to do it, let him be deposed.' Now then the argument of Dominicus a Soto is very good. If bishops and priests might use marriage, what hinders them from contracting marriage? There is

[a] Justinian. Nov. 123. cap. 13. [Authent. coll. ix. tit. 6.]
[b] [Can. iv. tom. i. col. 533.]
[c] Carm. de sua vita. [lib. ii. carm. 11. lin. 502. tom. ii. p. 700.]
[d] Habetur [decret. part. 1.] dist. xxxii. cap. 'Quoniam.' [cap. 13. col. 165.]

no undecency in the thing, therefore no inconsistency with orders. Since therefore it is certain that the married bishops and priests not only in the Greek church, but even in the Latin, in Germany, in France, in England, where they kept their wives in despite of the pope for a long time, did retain the liberties and societies of marriage; there can be nothing in the thing that can make it unfit for them to contract marriages, to whom it is fit to use them.

§ 29. There is but one thing more which I think fit to be considered in this affair, and that is, that there is a pretence of a vow of continence annexed to holy orders; and that therefore it is not lawful for bishops and priests to marry, when they have vowed the contrary. This indeed concerns them who have made such a vow; but not them that have not. But who made it necessary that persons to be ordained should make such a vow? even they only that made laws against the clergy's marriage; and because they durst not trust the laws which they made, they took order that men should become a law unto themselves, that they might be ensnared to purpose. This vow was only introduced in the Latin church, and enjoined to all her clergy[e]. Enjoined, I say, against the nature of a vow, which if it be not voluntary, is no vow; which includes desire in its very name and nature. But orders do not include this vow in their nature, and it were intolerable that men should be forced from their wives against both their wills: that's a persecution, not an ordination, and it is so far from being for the advantage of the church, that it is expressly against a commandment of God, that what He hath joined, any man should separate: and yet we find many in the primitive churches by force made priests and bishops against their wills. S. Augustine was taken at Tagasta and made priest whether he would or no, but he was not married; but another good man was. Pinianus, the husband of Melania, was ordained against his will and the tears of his wife. Paulinianus, the brother of S. Hierome, was first made deacon by Epiphanius, and then made priest, and they were forced to stop his mouth that he might not deny it. And can it be thought that these men did in this violence make a vow of single life? or can these be fitting circumstances for a vow? But I shall not insist upon the particulars of this: because if they should make such a vow, yet if they found it to be a snare, and impossible to be kept, they had not only leave, but a necessity to break it. If the vow was constrained and proved impossible, it was the less sin in the taking, and none in the breach of it. But if it was voluntary it was rash, unless they had been sure the thing had been in their power; and then if it proves not to be so, the fault is not in the breach but in the undertaking. *Quod si perseverare nolunt, vel non possunt, melius est ut nubant, quam ut in ignem deliciis suis cadant; certe nullum*

[e] Alexand. III. cap. 'Sane,' de cler. conjug. [Greg. ix. decret., lib. iii. tit. 3. cap. 2. col. 941.] Vide Cajetan., opusc. tom. i. tract. 27. [fol. 62. fol. Ven. 1594.]

fratribus aut sororibus scandalum faciant, so S. Cyprian[f] advises the professed virgins: 'if they will not, or cannot persevere, it is better that they marry than fall into the fire and into burning; only let them give no scandal,' meaning by their unchaste lives. And Epiphanius[g] expressly, *Melius est lapsum a cursu palam sibi uxorem accipere secundum leges:* 'if a man have undertaken a load too heavy, and falls with it, it is better to lay it aside, and openly to take a wife.' The same counsel is given by S. Hierome[h], by S. Austin[i], and by Alfonsus Virvesius a divine of the Roman church. To which I shall add nothing of my own but this, that if the holy vow of marriage, appointed and confirmed and accepted by God, may yet be dispensed with and annulled, much more may the vow of virginity and single life. If the adultery of the wife makes the husband's vow and promise to be void; much more may his own adultery or fornication make void his vow of single life. If for the dishonour of his house, and the introduction of bastards into his temporal possessions, he is absolved from his vows of wedlock which God certainly did approve and appoint; much more may his vow be null when there is danger or ruin to his soul. A man may lawfully live with an adulterous wife; and yet he may choose, and his vow does not oblige him: but he cannot safely live with burnings, he cannot lawfully abide in fornication and uncleanness. For 'who can dwell with everlasting burnings[k]?'

It were not unseasonable to consider the ecclesiastical law against the second marriages of priests, or the ordaining them who have married the second time. But this also relying upon the humour of men, who will be more pure than God, and more righteous than the law of Christ, and more wise than the apostle, it may be determined by the same considerations. The law is a snare, it is an incompetent matter, it is a restraint of that liberty which Christ hath left, it cannot be fitted to time and place, and yet remain a law; because there are so many necessities to be served, and so many favourable cases to be considered, that the exceptions may be more than the rule. It may also be considered, that to make second marriages a cause of irregularity, or incapacity of receiving holy orders, is nothing but a secret accusation and an open reproach to marriage; that it was not of use and avail in the primitive church, Tertullian[l] witnessing, *apud vos digami ubique præsident,* in the catholic church 'bishops twice married do everywhere govern;' that Cauterius a Spanish bishop was twice married; that S. Hierome[m] affirms that all the world was full of such ordinations, not only of deacons and priests, but of bishops, and that he could reckon so many as would excel the number of the

[f] Lib. i. ep. 11. [al. epist. iv. p. 8.]
[g] Hæres. lx. [qu. lix. p. 497.] et hæres. lxi. [p. 512.]
[h] Epist. ad Demetriad. [tom. iv. part. 2. col. 796.]
[i] Lib. de bono conjugal., et habetur dist. 27. c. 'Quidam.' [can. 2. col. 143.]
[k] [Is. xxxiii. 14.]
[l] De monogam. [cap. xii. p. 533 B.]
[m] Ad Ocean. [epist. lxxxii. tom. iv. part. 2. col. 647.]

bishops convened in the council of Ariminum; that S. Augustine had fornicated with two several women, and yet he was made priest and bishop for all that; and to deny that to holy marriages which is not denied to unholy fornications, will be a doctrine unfit for the honour of christian schools[n]; that the second marriage is as holy as the first[o]; that it may be as necessary and as useful; that it is always as lawful; that the canon of the apostle, that 'a bishop should be the husband of one wife,' is intended against plurality of wives at once, and marrying after divorces, both which were usual amongst the Jews and Greeks and Romans, and could not at first be taken away from the new-converted Christians; that it was so expounded by S. Chrysostom[o], Theodoret[p], S. Hierome[q], and divers others, but especially by the Greek fathers; that not only the first marriages are blessed by God, but the second and the third, as S. Austin[r] observes; that S. Clemens of Alexandria[s] affirmed, that *διγαμία μετὰ ἐπαγγελίαν παράνομον, οὐ διὰ τὴν συνάφειαν, ἀλλὰ διὰ τὸ ψεῦδος*, 'digamy after a vow to the contrary is an irregularity, not for the contact and conjunction, but for the lie;' that the church of Rome does without scruple frequently ordain them that have been twice married, if they will pay the price appointed in the chancery tax, as is witnessed by one that knew very well[t]; that if the apostle had forbidden it by a canon, yet that canon did no more oblige the descending ages of the church than the other canons which we see broken in every church, according to their reason or their liberty; that in the primitive church they were not very solicitous about the affairs of marriage, because they supposed the end of all things was at hand: *Crescite et multiplicamini evacuavit extremitas temporis*[u]; that it was a blot in the face of the primitive church that they would not bless second marriages; that it was most rationally and elegantly complained of by S. Bernard[x]; that second marriages are not a sign of incontinence, but the cure, or if they were a sign of an incontinent body, they are a sure sign of a continent mind, that will at no hand admit any uncleanness; that a great liberty permitted is infinitely to be preferred before a little prevarication of a divine law, and therefore that second marriages are to be permitted to the clergy, rather than evil thoughts, or the circles of an inward fire; that the prohibition of the ordina-

[n] Glossa in dist. xxxiv. can. 'Fraternitas,' hanc rem exhorruit.—'Ecce casus, ubi plus juris habet luxuria quam castitas: quia castus repelleretur, si contraxisset cum secunda; sed fornicator non.' [can. 7. col. 184.]—Vide etiam S. August. epist. lxiv. [al. xxii. tom. ii. col. 28.]

[o] In locum apost. 1 Tim. iii. [tom. xi. p. 599 A.]

[p] In loc. [tom. iii. p. 653.]

[q] Ad Ocean. [epist. lxxxii. tom. iv. part. 2. col. 647.]

[r] [De bono viduit., cap. 4. tom. vi. col. 371: cf. pseud. Aug. de fide ad Petrum, cap. 42. tom. vi. append. col. 32 D.]

[s] [Lege Clem. Rom. in const.] lib. iii. cap. 2. [Coteler. patr. apost., tom. i. p. 278.]

[t] Spalat. l. ii. cap. 10. n. 75. [tom. i. p. 318.]

[u] Tertull. [ubi supra.]

[x] Serm. lxvi. in Cantica. [vol. i. col. 1495. ed. Mabill., fol. Par. 1690.]

tion of persons after the second marriages did rely upon the opinion of holiness that was in the ecclesiastical order above the lay purity, and the unholiness of marriage in respect of single life; that in whatsoever sense the former can be true, yet the latter is a branch of Montanism, and a product of the heresy of Tatianus; that Theodoret did ordain Irenæus that was twice married; that he defends the fact by the consent and suffrages of the bishops of Phœnicia, and says that he insisted in the footsteps of his ancestors, and produces for his precedent, Alexander of Constantinople, Acacius of Berœa, and Praylus of Cæsarea, who ordained Domnus after his second marriage; that the chief of the diocese of Pontus did so, and all the bishops of Palestine; that they accounted it holy according to the opinion and doctrine of their nation, for so we read in Maimonides[y], 'Although a man have fulfilled the precept concerning the multiplication of mankind, yet nevertheless it is prescribed in the sayings of the scribes, that no man should cease from the multiplication of his kind, so long as he can well continue it; for whosoever shall add a soul to Israel is like him that buildeth up the world.' And it is moreover in the sayings of the wise men, that a man should not keep a house without a wife, lest he be provoked by lust. It may also be considered that he that burns had better marry, though he have been already married, and though he be a bishop; that the virgin or widow estate is nowhere commanded, but that in some cases marriage is, as in that of burning; that in scripture no chastity or continence is required of a bishop but the matrimonial; that Abraham the father of the faithful was married again after the death of Sarah; that S. Joseph the supposed father of our B. Lord was by the ancients said to be twice married; and lastly, that it is confessed that the forbidding second marriages to the clergy, and refusing to ordain such as have been twice married, is neither of the law of nature, nor any article of faith, nor any necessity of the sacrament: it is only a constitution of the church, which as the pope binds on, so he may take off as he please, as is affirmed by Aquinas[z], Durandus[a], Gabriel Vasquez[b] and others: and therefore this law also ought to be cancelled; but if it be not annulled by express revocation, it is unjust, and unreasonable, and unnecessary, and a snare to consciences, and is not the circumstance of a thing commanded, but of that which ought to be left at liberty, and therefore is no measure or proper band of conscience; but to us it is an obligation neither in conscience nor in law. But

> Hæc ideo volui nostris intexere chartis
> Ut quoties coeunt patres....
> Sint memores, magno ad leges opus esse ferendas
> Ingenio, multis oculis, examine recto[c].

[y] Halach. Ishoth, cap. 15. [apud Selden. de jur. nat. et gent., lib. v. cap. 3. tom. i. col. 509.]

[z] Quodl. 4. art. 18. [tom. viii. fol. 26 a.]

[a] In sent. 4. dist. xxvii. q. 4. [p. 800.]

[b] In 3 part. tom. iii. disp. 249. cap. 5. [p. 779.]

[c] Mantuan. [Fast., lib. i. in Jan. vit. S. Hilar. lin. 101.]

I have given these instances not only to fix the conscience in these great enquiries, but by these to explicate the measures of the rule.

SECT. V$_I$.—OF ECCLESIASTICAL LAWS OF FAITH, OR ARTICLES OF CONFESSION.

RULE XXI.

THE CATHOLIC CHURCH IS A WITNESS OF FAITH, AND A RECORD OF ALL NECESSARY TRUTHS; BUT NOT THE MISTRESS AND RULER OF OUR CREED; THAT IS, CANNOT MAKE ANY LAWS OF FAITH.

§ 1. In our enquiries of faith we do not run to the catholic church desiring her to judge our questions; for she can never meet together; and she is too great a body to do single acts and make particular sentences: but to her we run for conduct, by enquiring what she believes, what she hath received from Christ and His apostles. So that the authority of the catholic church is resolved into catholic tradition. Whatsoever can be made to appear to have been by the apostles taught, and consigned to the church, that it is a law of faith. But of this I have already given accounts[d]. The catholic church, taking in the apostolical, that is, the church of all ages, is a witness beyond exception. For if she have the spirit of God, if she love truth, and if she do not consent to deceive herself, she cannot be deceived in giving testimony concerning matter of fact and actual tradition: or if she could, yet we are excused in following that testimony, because we have no better, we have no other. Better than our best, and better than all we have, we cannot be obliged to use: but therefore we have the justice and the goodness, our own necessity and the veracity of God for our security, that this is a sure way for us to walk in. But then when this is reduced to practice in matters of belief, it will come to this only, that she bears witness to the scriptures, that they are the word of God; but beyond what is contained in scripture, she hath no article of faith.

§ 2. The consequent of this which I have largely proved and explicated in the place above cited, is, that all her sermons and all her explications of doctrines must be by that measure. If it be agreeable to scripture, it is that which she hath received: but if she hath not received it, she cannot make a doctrine, nor deliver a proposition with authority, nor oblige the conscience.

[d] Lib. ii. chap. 3. rule 14. [vol. ix. p. 598.]

§ 3. But this rule if it be understood of the catholic church of this or any one present age, will not signify so much: for unless the tradition be delivered in a constant succession from the apostles, the church is not a certain witness, but makes herself a judge of truth; which she can never do, but by relating to the scriptures, by shewing there it is, in the code which she hath received. But when any doubt does arise concerning any matter of belief, the catholic church hath no solemn court of judicature or place of resort, where a single person may go for determination. And if a question be between church and church, as between Rome and England, the question is, which is the catholic church; for indeed neither of them is: and there is no such thing then as a catholic church to determine the question: as when the head and the belly, the mouth and the arms fell out, the whole body could not be judge of the controversy; but if they had had a rule, thither they might go to be guided. And if it be asked, who shall expound the rule, there is no other answer to be given, but to desire men to be good and humble, to pray to God, and without partiality to desire truth; and then every man will be able to answer his own question. For if the rule be hard, it is hard to them that are not willing and soft and compliant; but not to the gentle and the humble, to them that follow God in simplicity, and whithersoever He will lead them.

§ 4. But it is to be considered that the church is a net that hath in it fishes good and bad, it is a field of corn and tares; and but that the apostles were guided by an infallible spirit, there could have been no certainty: but then after them there was no more to be looked for; what they left we were to use, but to look for no more. For the catholic church never was since the apostles' time without error. By catholic church, I do not mean the right believing part of the church, (for in questions of faith the dispute was, which was the right believing part,) but I mean all that profess the faith of Christ, who when they are divided will never allow the opposite party to be their judge: and therefore it cannot be supposed that God should appoint one to be the judge, who must always be supposed a party, and will never be accepted by the other, unless He had given infallibility to that one part, and we had all known it. To the apostles He did, and they were the fountains of tradition: but when they were gone, the only way that was left was to see what they left, and to that every part was to conform; but neither part was judge, except only for themselves: and in this every part ought to be trusted, because they only had the biggest concern to take care that they be not deceived. No man or company of men was charged with them; every government was charged with its own care and conduct.

§ 5. But I shall not insist upon this, because it can be of no use in the conduct of conscience. Because if ever there be a dispute in the church, there is no catholic church to which we can go: and if we call that the catholic church which is the greater part, that may

deceive us; for in the days of Elias almost all Israel had corrupted himself, and in the time of the Arians almost all the world was Arian; and at this day a very great part of the catholic church is stained with the horrible errors and follies of popery: and besides our notices are so little and narrow of the belief of christendom, our entercourses so small, our relations so false, our informations so partial, that it is not possible for us to know what is the belief of the major part. It is not known at this day by the doctors of the Roman church what is the practice of the Greek churches in the marriage of their priests, nor what is their doctrine of purgatory, nor of the procession of the Holy Ghost, as appears in their disputes and contrary narratives of these particulars. We cannot tell in England at this day whether the Lutheran churches have right ordinations and perfect succession of bishops in their churches. I have endeavoured very much to inform myself in the particular, and am not yet arrived to any certain notice of it. This therefore, to appeal to the sense of the major part of the church in a question, will signify nothing at all as to our conscience.

§ 6. Especially if to this we add, that the churches have got a trick of empire and imposing their sometimes false and always unnecessary articles upon all of their communion; and then the faith of the church will depend upon the opinion of the chief and principals: and then their belief will be like a rumour spread from a few mouths into the ears of millions, who, though they all tell the same story, yet are no more credible for their multitude than the first reporters were for their authority. Nay in most places men dare not speak what they think, and dare not believe what they find dangerous, and dare not enquire into what they dare not disbelieve; so that if you had been at Trent and asked the fathers, it would have signified nothing: for whatever their belief was, they were borne down by the congregations, and the congregations by the legates, and the legates by the pope; and that's the catholic church.

§ 7. It remains therefore that we are from the catholic church to expect no other determination of our questions, but by conveying to us notice of the doctrines apostolical. And this is often and largely discoursed and taught by S. Irenæus[e], by S. Clement[f] in Eusebius, by Tertullian[g], by Origen[h], S. Cyprian[i], S. Athanasius[k], S. Basil[l], Epiphanius[m], S. Hierome[n], S. Austin[o], and Vincentius Lirinensis[p]:

[e] Lib. iii. cap. 40, [al. 24. p. 222.] et lib. v. cap. 20. [p. 317.] lib. iv. capp. 63, [al. 32. p. 272.] et 43. [al. 26. p. 262.]

[f] Lib. iii. cap. 12. [al. cap. 23.]

[g] De præscript. [cap. 20. p. 208 sqq.] et contr. Marcion., lib. iv. [cap. 5. p. 415.]

[h] In procem. lib. i. περὶ ἀρχ. [de princip. tom. i. p. 47.]

[i] Epist. ad Pompei. [epist. lxxiv. p. 210 sqq.]

[k] Ad Serap. de Spir. S. [tom. i. p. 719.]

[l] Serm. contr. Sub. et Arrium. [tom. ii. p. 193, 4.]

[m] Hæres. xxxi. [tom. i. p. 202.]

[n] Adv. Lucifer. [tom. iv. part. 2. col. 294.]

[o] Contr. Faust. Manich., lib. xi. cap. 2. [tom. viii. col. 219.]

[p] Cap. antepenult. [cap. xli. Max. bibl. vet. patr., tom. vii. p. 262.]

what they could derive from the fountains apostolical by a clear channel and conduit, that was first, and that was true, and that was in the rule, and that was the measure of faith. And therefore when in the council of Ephesus[q] the epistle of Capreolus the bishop of Carthage was read for the establishment of antiquity, and the reproof of the new doctrines, all the bishops cried out, *hæ omnium voces sunt, hæc omnes dicimus, hoc omnium votum est.* This was the voice of them all, they all said the same thing: and what was that which they all affirmed, *nisi ut quod erat antiquitus traditum, teneretur; quod adinventum nuper, explodereturʔ* saith Vincentius[r], 'that what is ancient and at first delivered, that should be held; that which is lately invented should be exploded.' For the church cannot determine questions by way of judgment and authority, but by way of attestation, and as a witness only for the doctrine apostolical. There is nothing else necessary, and nothing else is practicable.'

RULE XXII.

THE DECREES OF GENERAL COUNCILS ARE OF GREAT USE IN THE CONDUCT OF CONSCIENCE, BUT NOT THE PROPER MEASURE OR LAST DETERMINATION OF MATTERS OF BELIEF.

§ 1. I BEFORE[s] considered councils as they had acquired an accidental authority by the veneration of their age, and their advantage of having been held in the elder ages of the church: now I consider them in their own proper and immediate pretence. I then considered them in order to government, but now in order to faith: for councils ecclesiastical have pretended to a power over the conscience, so as to require both the obedience of the will and the obedience of the understanding. Concerning which I am to say, that nothing can oblige to divine faith but a divine authority: to which councils can no more pretend for being general than for being provincial; and to which great assemblies have no other title or pretence of promise than the private congregations of the faithful, who though but two or three, yet shall be assisted by the divine presence. But general councils are so wholly of human institution, that though by the dictate of right reason and natural wisdom they are to be convened, yet to make them a formal judicatory, and to give them a legislative power or a dominion and magistery in faith, there are so many conditions required both to their indiction and convention, to their constitution and integrity, to their conduct and proceeding, to their

[q] [Act. i. tom. i. col. 1422.]
[r] [Contr. hær., cap. 42. Max. bibl. vet. patr., tom. vii. p. 262 G.
[s] Rule 14. [p. 356.]

conclusion and determination, that men are not to this day agreed about any one of them; and therefore they cannot be a legal judicatory obliging any but them that do consent, and so oblige themselves.

§ 2. But yet they are of great use for enquiry and consultation: and therefore Eusebius[t], speaking of Constantine the emperor, says of him, *Concilium generale tanquam Dei exercitum instruens, in unum locum coegit:* 'a general council is God's army;' and being a representative of the church in the same degree as it is general and rightly called, and rightly ordered, and rightly proceeding, it partakes of the church's appellation; it is *acies ordinata,* 'terrible as an army with banners[u].' Let them be as many as it happens, 'in the multitude of counsellors there is safety;' that is, they are more likely to understand truth than single persons, for they are not so soon prejudiced and corrupted: as a river is harder to be poisoned or to be turned aside than a pail of water or a dish-full; but if it be, it is so much the worse. But if they proceed rightly they are excellent helps, and some of them have done great good to the church, and some have done great mischief; and which have, and which have not, we are to enquire by other instruments: so that we are to judge concerning them, and then they are to be guides to us; that is, we consider which are fittest to be followed, of which we judge by general and extrinsic considerations, and then we follow them in the particular enquiry; that is, we follow them because we think they followed the apostles, and were faithful witnesses of their doctrine. Which indeed is an excellent benefit which we may receive by the first and most ancient councils, which were near the fountains: they could trace all the new pretences up to their original, they discussed the doctrines in their provinces, they heard what any one could say, they carried it to the general assembly, they compared it with the tradition and doctrine of other churches, and all together were able very well to tell how the apostles had taught the churches of their foundation. And because the four first general councils did, or are supposed to have done so, therefore they have acquired a great but an accidental authority, and are accepted by the most part of christendom, and made into human laws of faith and the measures of heresy. Such use as this the conscience can make of the ancient councils; but beyond this or some such good use as this the conscience is at no hand obliged to follow their determinations as the sentence of a competent judge, but as of an authentic witness, when it can appear or be credible that it can be so and is so. And this was the very thing that S. Athanasius[v] affirmed of the Nicene council, *Siquidem Nicæna synodus non temere habita est, ut quæ habeat gravissimos usus et legitimam rationem.* The Nicene synod was of great use. They met

[t] Lib. iii. de vita Constant., c. 6. [p. 579.]

[u] [Cant. vi. 4.]

[v] De synod. [tom. i. p. 719.]

about the question of Easter and the Arian heresy. *Sed in negotio Paschatis non abhorruerunt ab istiusmodi appendice. Ibi enim placuit ut adderetur, Visum est ut omnes obtemperarent. De fide vero non scripserunt, Visum est; sed ad istum modum, Credit catholica ecclesia: et statim confessio ipsa credendi adjuncta est, ut ostenderent eam non esse novam sententiam, sed apostolicam, et quæ ipsi scripsissent non esse sua inventa, sed apostolorum documenta:* ' but in the matter of Easter, because it was a ritual, and the circumstance of time and the unity of order, they decreed that every one should obey. But in the matter of faith they did not write so, that they appointed every one to obey, but in this manner, The catholic church believes: and then they adjoined the confession of faith, to shew that the doctrine was not new, but that it was apostolical, it was that which they wrote, but nothing of a later birth.' To any other purpose neither the council of Nice nor the council of Ariminum is of any use or authority: save only it is the sentence of so many men, and is to be received according to the credibility of the men, or the reasonableness of the article.

§ 3. But then let it be considered to what the authority of a council will amount according to the sentence of most men. The doctors of the church of Rome (a few only excepted) say that a council, if it be not confirmed by the pope, hath no authority. Upon this account, if they say true, every council is fallible, and therefore no rule or guide of faith: for unless it can be deceived, why should it be submitted to the judgment of the pope? and if it can be deceived, it cannot bind, because it cannot secure the conscience. But the others that are not of the Roman party say, a council is then not deceived when it delivers the doctrine of Christ and His apostles, and speaks consonantly to scriptures: and if a single doctor does so, he is to be believed. What then? where's the difference? This only is it, that it is more likely a council shall find out the truth, and report the tradition; and if we be to choose our faith by guess and probability, a council is better than a single doctor, by so much as there are many more than one doctor in it. But this will only serve the turn till men are willing or at leisure to enquire: this only excepted; because few men can judge, and most men are ruled by others, all such persons can have nothing better to rule and determine them than a general council: but then it is an argument of reason, and not of authority; it is not because they are bound, but because it is most reasonable in their circumstances.

§ 4. I should here have considered of what authority the writings of the fathers are to the interpretation of scripture and the conduct of conscience: but because I find only the same use of them as of other learned men in all ages of the church, save only in those things where they are witnesses of the apostolical doctrines, to which they best can give testimony who are the most ancient, and because themselves disclaim any authority in matters of faith, and call to be tried

by the word of God[x], I had rather this thing should be read in others than in myself: because it is matter of envy and reproach to tell why they cannot be relied upon; and to add more reputation to that authority which they have acquired by many intervening causes, by reason, and by unreasonableness, would be matter of danger, and sometimes the causes of error, and very often of a deceitful confidence. But who please may see this uncertainly disputed, and never concluded to any certainty, by Cajetan[y] on one side, and Melchior Canus on the other. He may also consider the saying of the bishop of Bitonto[z], that he preferred the sentence of one pope before a thousand Hieromes, and a thousand Augustines and Gregories; and that every side declines their arbitration when they speak against them: by which it appears that no side supposes themselves to be bound in conscience to follow them.

§ 5. But the best use of them is that which the church of England hath described in one of her ancient canons, that her bishops and priests should teach nothing *nisi quod ex doctrina Veteris et Novi testamenti veteres patres et ecclesiæ episcopi collegerint*[a], 'but what the fathers and ancient bishops of the church have gathered out of the doctrine of the Old and New testament:' which canon gives a very good answer to this enquiry if we should enter into it. For it declares that the fathers are so far to be followed as they follow scripture, and that their writings are of great use for the reproof of new doctrines: and certainly if preachers were confined to this measure, possibly we might miss some truths which now it may be we find; but it is certain we should escape very many errors. For the rest, I refer my reader to the archbishop of Spalato, *De rep. eccles., lib. vii. c.* 6, to Rivet's *prolegomena* to his *Criticus sacer*, to Daniel Tossanus his *Synopsis de legendis patribus*, to Gregory de Valentia his *Analysis fidei*, to bishop Morton his Catholic apology, and to Dr. Whittaker *De script. auctoritate*. In this whole affair the conscience is at liberty, and therefore I am here to enquire no further.

[x] S. August., epist. xlviii. [al. xciii. cap. 9. tom. ii. col. 242.] et epist. ci. [al. cxlviii. cap. 4. col. 502.]—Vide Gratian. [decret. part. 1.] dist. ix. [can. 9, 10. col. 31.]—Cyril. Hier., catech. iv. [§ 17. p. 60.]—S. Hieron., epist. xix. [? ad Hieron. epist. xix. inter epist. August., Ben. lxxxii. tom. ii. col. 190.] et epist. lxxvi. [al. lvi. tom. iv. part 2. col. 589.]

[y] Præfat. in comment. de locis com., lib. vii. c. 3. concl. 3, et 4. [p. 355, 7.]

[z] [Cornel. Mussus,] concion. in epist. ad Rom., cap. 14. [p. 606.]

[a] ['nisi quod consentaneum sit doctrinæ Veteris aut Novi testamenti, quodque ex illa ipsa doctrina catholici patres et veteres episcopi collegerint,'—Can. A.D. MDLXXI. Wilkins, concill., tom. iv. p. 267.]

RULE XXIII.

SUBSCRIPTION TO ARTICLES AND FORMS OF CONFESSION IN ANY PARTICULAR CHURCH IS WHOLLY OF POLITICAL CONSIDERATION.

§ 1. WHEN forms of confession are made and public articles established, it is of great concernment not only to the reputation of the government, but to the unity and peace of that christian community, that they be not publicly opposed. To this purpose we find so many subscriptions to the decrees of councils, by princes and prelates, and priests and deacons, by prefects of cities and governors of countries; it was an instrument of unity and peace, a declaration of their consent, and at no hand to be reproved, unless it be in a false article, or with tyranny to consciences, or to maintain a faction. But that which the government looks after is, that no new religions be introduced to the public disturbance; of which the Romans were so impatient, that they put to death a noble lady, *Pomponia Græcina, utpote novæ cujusdam religionis rea,* saith Tacitus[b], 'as being guilty of a new religion.' Now to prevent this, subscription is invented, that is, an attestation of our consent; which if it be required by the supreme authority, it may be exacted in order to peace and unity: and Tacitus tells that Apudius Muræna[c] was degraded from the dignity of a senator because he refused to subscribe to the laws of Augustus. This is the same case, for subscription serves no other end but that which is necessary in government. We find in Polydore Vergil[d] that the ancient kings of England at their inauguration, *Silicem tenebant juraturi per Jovem, se religionem et ritus patrios retenturos, hæc verba loquentes, Si sciens fallo, tunc me Diespiter salva urbe arceque bonis omnibus ejiciat;* 'they swore by Jupiter that they would keep the religion and their country rites, and cursed themselves if they did not.' This was more than ecclesiastical subscription: for that bound them to it for ever; this only gives witness of our present consent, but according to its design and purpose, for the future it binds us only to the conservation of peace and unity.

§ 2. For though it may be very fitting to subscribe a confession of articles, yet it may be very unfit that we swear always to be of the same mind; for that is either a profession of infallibility in the authority or in the article, or else a direct shutting our heart against all further clarity and manifestations of the truths of God. And

[b] Lib. iii. cap. 7. [lege lib. xiii. cap. 32. —superstitionis externæ rea.]

[c] [Apidius Merula,—annal., lib. iv. cap. 42.]

[d] De rerum inventor., lib. iv. cap. 12. [p. 265. 8vo. Arg. 1606.]

therefore subscription ought to be so intended, that he who hath subscribed may not perceive himself taken in a snare; but yet he that subscribes must do it to those purposes and in that sense and signification of things which the supreme power intends in his commanding it; that is, at least, that he who subscribes does actually approve the articles overwritten; that he does at that time believe them to be such as it is said they are; true, if they only say they are true, useful, if they pretend to usefulness, necessary, if it be affirmed that they are necessary. For if the subscriber believes not this, he by hypocrisy serves the ends of public peace and his own preferment.

§ 3. But this whole affair is to be conducted with some wariness, lest there come more evil by it than there can come good. And therefore although when articles are framed, the sons of the church ought to subscribe them for public peace, in case they do heartily approve them; yet such articles ought not to be made and imposed, unless they of themselves be necessary, and plain by a divine commandment. And this was the advice of Melancthon[e]: *Ut sit igitur discordiarum finis, recte facit potestas obligans homines ut obtemperent, quando alioqui parere est necesse;* 'the supreme power may then command men to subscribe to such articles, which it is necessary that they should believe.' But if God have not commanded us to believe them, no human power can command us to profess them.

§ 4. Beyond what is necessary or very useful, unless peace be concerned in the publication of the article and its establishment, it is but weakly and impertinently concerned in the subscription. For if the peace of the church be safe without the article, how can it be concerned in the consent to it and profession of it, excepting only by an accidental and a necessity superinduced by themselves and their own imprudent forwardness, or itch of empire over consciences? If an article be contested publicly, and is grown into parties and factions, and these factions cannot be appeased without decision of the question, then the conformity is as useful to peace as the sentence and determination was; and then there is nothing else to be considered, but that the article be true, or believed to be so. But to them that are so persuaded, it is necessary they obey, if they be required to subscribe; and the supreme power hath authority to require it, because it is one of their greatest duties, to govern and to rule in peace. But these things can seldom happen thus without our own fault: but when they do, there is inconvenience on all sides; but that which is least must be chosen.

§ 5. When articles are established without necessity, subscription must be required without tyranny and imperiousness. That is, it must be left to the liberty of the subject to profess or not to profess that doctrine. The reason is plain. In things not certain in them-

[e] In epist. et consiliis theologicis. [vid. epist. ad Henricum regem, tom. iv. p. 843.]

selves no man can give a law to the conscience, because all such laws must clearly be divine commandments: but if the conscience cannot be bound to the article, and the profession serves no necessary end of the commonwealth, then God does not bind, and man cannot: and therefore to bring evil upon men that do not believe the article, and dare not profess to believe what they do not, is injustice and oppression, it is a law of iniquity; and therefore it is not obligatory to conscience, and no human authority is sufficient for the sanction and imposition. Socrates[f] was wont to say, *Sacramentum oblatum duabus de causis fide firmandum: vel ut teipsum a turpi suspicione liberes, vel ut amicos ex magnis periculis eripias.* When you are required to give faith and security by a sacrament, oath or subscription, there are two cases in which you must not refuse: when thou thyself art suspected, and canst no otherwise purge thyself; and when any of thy relations is in danger, that is, when it is for good to thyself or thy friends. But when there is no necessity of faith, and no public need to be served, the causes that besides these enjoin subscription are fond persuasions, and indiscreet zeal, and usurped empire over consciences: in which cases the ecclesiastic state hath no power to give commandments; and if the civil state does, they oblige to suffering calamity, but not to any other conformity, and then it is a direct state of persecution.

§ 6. Upon the account of this rule it hath been of late enquired, whether it can be lawful for any man to subscribe what he does not believe to be true, giving his hand to public peace, and keeping his conscience for God.

§ 7. But to this the answer is easy, if subscription does signify approbation; for in that case it is hypocrisy, and a denying to 'confess with the mouth,' what 'we believe with the heart.' But if subscription were no more than the office of the clerk of the signet or of a council, who in form of law is to sign all the acts of council, then the consideration were different. For he that is a public officer, and interposes the signature of the court, not as the account of his own opinion, but as a formality of the court, all the world looks upon it as none of his personal act, but as a solemnity of law, or an attestation of the act of the council. But in subscription to articles of confession, or censure of propositions as heretical, every ecclesiastic that subscribes does it for himself, and not for the court. *Lubens et ex animo subscripsi:* that's our form in the church of England. *Consentiens subscripsi:* so it was in the ancient councils, as S. Austin[g] reports; 'I consent to the thing, my mind goes along with it.' But in this case the whole affair is put to issue in this one particular, which I touched upon before,—If the intention of the superior be to require our assent to be testified by subscription, he that subscribes does profess his assent, and whatever he thinks him-

[f] [Lege Isocrates,] apud Stobæum. [floril. tit. xxvii. it.]

[g] Epist. ccxxiv. ad Alipium. [al. epist. cxxv. tom. ii. col. 367 C.]

self, it is the intention of the imposer that qualifies the subscription. S. Austin[h] tells of a senator that upon his parole went to treat for his ransom or exchange, and promised to return to them again in case he could not effect it. But he going from the army pretended to have forgot something, and came back presently, and then departed. But telling his story to the Roman senate, and pretending himself quit of his promise because he went back presently, they drave him out of the senate; because they regarded not what he had in his head, but that which the enemy intended, when they made him swear to return.

§ 8. But the effect of these considerations will be this, that no particular church ought with rigour to require subscriptions to articles which are not evidently true, and necessary to be professed; because in the division of hearts that is in the world, it is certain that some good men may dissent, and then either they shall be afflicted, or be tempted to hypocrisy: of either of which if ecclesiastic laws be guilty, they are not for edification, they are neither just nor pious, and therefore oblige not.

§ 9. But if for temporal regards the supreme power do require subscription, those temporal regards must be complied with, so that the spiritual interest of souls and truth be secured. And therefore the next good thing to the not imposing uncertain and unnecessary articles is, that great regard be had, and great ease be done to wise and peaceable dissenters.

§ 10. And at last, in such cases, let the articles be made with as great latitude of sense as they can; and so that subscriptions be made to the form of words, let the subscribers understand them in what sense they please which the truth of God will suffer, and the words can be capable of. This is the last remedy, but it is the worst; it hath in it something of craft, but very little of ingenuity; and if it can serve the ends of peace, or of external charity, or of a fantastic concord, yet it cannot serve the ends of truth and holiness, and christian simplicity.

[h] Ubi supra [col. 366 C; Cic. de offic., lib. iii. cap. 32, ex Polyb., lib. vi. cap. 58.]

CHAP. V.

OF LAWS DOMESTIC: OR THE POWER WHICH FATHERS OF FAMILIES HAVE TO BIND THE CONSCIENCES OF THEIR RELATIVES.

RULE I.

CHILDREN ARE BOUND TO OBEY THE LAWS AND COMMANDMENTS OF THEIR PARENTS IN ALL THINGS DOMESTICAL, AND IN ALL ACTIONS PERSONAL RELATING TO THE FAMILY, OR DONE WITHIN IT.

§ 1. THE word of the commandment is כָּבֵד, which signifies to 'be' or to 'make weighty[a];' but in *piel* it signifies 'to honour,' that is, 'honour your parents,' and do not lightly account of them. But in Levit. xix. 3, the word is יִרְאוּ, 'fear thy mother and thy father.' They signify the same event of things, for a reverential fear is honour, and then both imply obedience. And there are three great endearments of this which make it necessary, and make it as absolute as it can be.

1) The one is that our parents are to us in the place of God:

Νόμιζε σαυτῷ τοὺς γονεῖς εἶναι θεούς,

said the Greek comedy[b], 'suppose your parents to be to you as gods.' *Hæc enim paternitas est nobis sacramentum et imago divinæ paternitatis, ut discat cor humanum in eo principio quod videt, quid debeat illi principio a quo est, et quod non videt*[c]; 'for the father's power is a sacrament and image of the divine paternity, that a man may learn by the principle of his being which he sees, what he owes to the principle of his being which he sees not.' and Plato[d] says, there is no image by which we can worship God so well as our fathers, our grandfathers, and our mothers. And therefore it is impiety to dishonour or disobey our parents, and it is piety when we

[a] [In Hiphil; vid. Gesen. ad voc.]

[b] [Menand. monostich. 379. p. 328. ed. Meineke.]

[c] Hugo de S. Victore, lib. i. de sacram. [part. 12.] cap. 7. [tom. iii. p. 578 B. fol. Rothom. 1648.]

[d] De legib. [lib. xi. § 11. tom. viii. p. 561.]

pay our duty to them. The same word signifies religion to God, which expresses this duty. *Parentes suos non amare, impietas est; non agnoscere, insania*[e]. For as there are two great crimes which we commit properly against God, impiety or irreligion, and atheism; so there are these two crimes against our parents. He that does not honour and revère them is impious or irreligious; and he that will not acknowledge them is atheistical, that is, like the atheists, he denies the principle of his being. And therefore upon that of Virgil[f],

Huc pater O Lenæe veni, ———

Servius observes that the heathens called all their gods by the name of fathers: and an injury done to our father is said to be done to God, according to that of Menander[g],

Ὁ λοιδορῶν τὸν πατέρα, δυσφημεῖ λόγῳ,
τὴν εἰς τὸ θεῖον δὲ μελετᾷ βλασφημίαν·

He that reviles and speaks evil of his father[h], does blaspheme God; for

Θεοὶ μέγιστοι τοῖς φρονοῦσιν οἱ γονεῖς[i],

God is the great Father of the world, and therefore He hath by the greatest religion immured the fathers' honour.

Et Jovis imperium et cari præcepta parentis,
Edocet[k] . . . .

Next to God is our duty to our father.

§ 2. 2) The second endearment of our duty, obedience and regard to parents, is gratitude; which here hath the greatest obligation, and is to this purpose remarked by all laws and by all wise men of the world.

Omnis in Ascanio cari stat cura parentis[l].

All their love and all their care is for their dear boy. The child is a part of his parents, a tender part, but under custody and a guard; and the state of descent and succession from parents to children is called *suitas* in the law: and there is so much of a father in his child, that if a father and a son be partners in a crime, and refuse to confess it before torments, the law commands the son first to be tormented: Charles the second, the emperor, did so; as knowing that the father will confess rather than endure to see his son tormented: and when the father does confess upon the torment of his son, the

[e] Seneca, l. iii. de benef. c. 1. [tom. i. p. 654.]

[f] In lib. ii. Georg. [7.]

[g] [In comparat. Menandri et Philemonis, ed. Rutgers, var. lectt., lib. iv. p. 366.]

[h] In verbis per totam vitam parentes venerari maxime decet, levium enim volatiliumque verborum gravissima imminet pœna.—Plato, de repub. [De leg. lib. iv. § 8. tom. viii. p. 116.]

[i] [Dicæogenes, apud Stob. floril. tit. lxxix. 83.]

[k] [Virg. Æn. v. 747.]

[l] [ib. i. 646.]

father is said to be *confessus in tormentis*, said Baldus[m], 'he confessed in his own torments.' And as long as the son is in prison, the father is not accounted free in law: and the father's sins are then punished, when the child is made sick, or unfortunate. So that the government of children is no otherwise than as a man's will governs his own hand and foot; over which, always supposing him to abide within the limits and inclinations of nature, that is, to love and cherish them, and in no sense to hate them, in all other he hath an entire power of command.

§ 3. 3) The third endearment of children's obedience is the power of blessing and cursing which God hath given to parents, and which Himself by His providence and great economy will verify. "The father's blessing establisheth the houses of children, but the curse of the mother rooteth out foundations," saith Ben-Sirach[n]. And S. Paul[o] exhorting children to obey their parents, says it is "the first commandment with promise," that is, the first to which any special promise is annexed, the promise of longevity in the land of promise. *Benedictio merces obedientiæ est*, saith Elias Cretensis, 'the father's blessing is the reward of the son's obedience.' But it is observable that the original word in the fifth commandment is of active signification, "Honour thy father and thy mother," that "they may prolong thy days upon the earth;" that is, saith Paulus Fagius, thy parents are God's ministers and instruments, the channels and conveyances of the divine blessing: for God hears the prayers of fathers and mothers blessing their obedient children, or cursing their disobedience; insomuch that Ezekiel[p] reckons their disobedience to their parents to be to the Jews the cause of their banishment from their own country. Suidas tells that Leontius the bishop of Tripolis in Lydia seeing his only son of an ill nature and apt to mischief, prayed to God that his son might die young, lest he should fall into impiety: and God heard the father's prayer.

Δειναὶ γὰρ κατὰ γαῖαν ἐριννύες εἰσὶ τοκήων[q]

'The curses of parents are grievous upon the earth.' And this was observed among the heathens in the sad examples of the children of Œdipus, Amyntor, and Theseus, who grew miserable upon their fathers' curses; and therefore Telemachus was afraid to cast his mother out of Ulysses' house, lest she should curse him. And this was it that brought servitude or slavery into the world; God having in one of the fountains of mankind, in the great patriarch of the world, consigned a sad example that for ever children should be afraid to dishonour their parents, and discover their nakedness, or reveal their turpitude, their follies and dishonours.

[m] l. i. in fi. C. Si rect. provi. in 2 lec. [In cod. Justin., lib. v. tit. 2.]
[n] [Ecclus. iii. 9.]
[o] [Eph. vi. 2, 3.]
[p] [Ezek. xxii. 7.]
[q] Orpheus. [apud Stob. floril., tit. lxxix. 28.]—Plato, lib. xi. de leg. [§ 11. tom. viii. p. 560.]

§ 4. To these I need not add their natural necessity, their disability to help themselves, their obnoxiousness to every evil, their defenceless condition, the miseries and calamities and infirmities by their want of wisdom, all which at first do infinitely endear obedience, and make it necessary: but I remember that this very thing was of great value amongst the ancients, and they did use to tell this fable to their children to teach them to obey their parents[r]:—"An old lion, amongst other precepts that he gave his son, charged him that he should never fight with a man, because if he was not too strong, he would at least be too crafty. The young lion heard him, but regarded him not, but therefore as soon as ever he was full grown, hastens abroad to seek a man to be his enemy. He came into a field, and saw a yoke of oxen standing ready furnished to plough, and asking them if they were men, they said, No, but that a man had put those yokes upon them. He left them and went aside, and espying a horse bridled and tied to a tree, asked if he were a man. He was answered, No, but a man had bridled him, and would by and by come to ride him, for a man was his master. At last he finds a man cleaving wood, and asked him: and finding him to be so, told him he must then prepare to fight with him. The man told him, With all his heart, but first desired him to help to draw the wedge out of that tree, and then he would. The young lion thrusts in his paws, and a little opens the tree till the wedge fell out, and the tree closed upon his feet by its returning violence. The man seeing the lion fastened, and the lion seeing himself entrapped, the man cried out to his neighbours to come to his help; and the lion to escape his danger tore his feet from the tree, and left his nails and blood behind him, and returning with shame and smart to his old father said to him, *Mi pater, si paruissem monitis tuis ungulas non amisissem*, I had not lost my nails if I had obeyed my father's commandment." For the commandments of parents being for the good of their children, he cannot be prosperous that will not obey his father. That was their meaning.

§ 5. But concerning the duty itself there is no question; nothing is plainer, nothing is easier: but concerning the limits and administration of this power there is very great difficulty; the scripture speaking either indefinitely or universally, either of which does equally need a limit and specification. "Children, obey your parents in all things," saith S. Paul[s]; and if that all were absolutely all, there were no difficulty in the understanding it; but infinitely difficult it would be to observe it, and reconcile it with our other duties and just interests. And just so is that law which by the consent of all the world is represented as universally, *Liberi quacunque in re parentibus dicto audientes sunto;* and he in the comedy[t],

[r] [Ex polyanthea nova J. Langii, s. v. 'Parentes.']

[s] [Col. iii. 20.]

[t] Plaut. Trinum. [act. ii. sc. 2. 1.]

Pater adsum,
Impera quod vis, neque tibi ero in mora,

'Here am I my father, command me any thing, neither will I resist.' But this any thing and this every thing is but any thing and every thing of a certain kind: which if we can establish upon certain measures, we have one great line more for the conduct of conscience. The divines and lawyers reduce the issues of this relation to three heads, I. Reverence, II. Animadversion, III. Piety.

OF REVERENCE TO PARENTS.

§ 6. And first it is certain whatever can be signified by honour and fear and reverence is the duty of children; that is, so far as to think honourably of them, to speak well of them, to conceal their faults, to excuse them to others, to comport themselves with reverence and great regard before them.

Βούλου γονεῖς πρώτιστον ἐν τιμαῖς ἔχειν[u],

'above all things have your parents in honour:' and this is to be expressed according as the parents shall require, and according to the customs of the nation and the most pious and obedient in it; for *vultu quoque lædi pietatem* was an old rule, 'a child may be rude and undutiful in his very looks;' and he deserves to be punished with blindness, *qui parentum vultus torvo visu despexerit, et elatis oculis læserit pietatem*, saith S. Hierome, 'who by proud looks and scornful eyes is impious to his parents.' But this duty is well described by Theophilus to Autolycus[x], *Sanctum et laudabile censetur, non solum apud Deum sed et apud homines, videlicet ut in simplicitate et absque omni malitia subjiciamur parentibus:* 'children must be subject to their parents without all malice and perverseness, and in all simplicity,' that is, ingenuity of words and manners. And when Ptolemy[y] asked one of the seventy-two translators of the bible how a son should pay due thankfulness to his parents, he was answered, *Si nulla re illos tristitia affeceris*, 'if you grieve them in nothing.' That's the surest measure.

§ 7. The next thing that is also certain in this is, that all the good counsels and precepts of holiness and wisdom which the parents give, it is necessary the children should observe; and besides that the not observing them is a sin against the special commandments, it is also a sin of disobedience, and a rebellion against the father's authority. So the father in the comedy[z] urges his authority,

[u] [Philem. apud Stob. floril., tit. lxxix. 30.]

[x] [lib. ii. cap. 35. p. 183. 8vo. Hamb. 1724.]

[y] [Arist. ad Philocrat. de LXXII. interpret., p. 77. 8vo. Oxon. 1692.]

[z] Plaut. Trinum. [act. 2. sc. 2. 8.]

Feceris par tuis cæteris factis, patrem
Tuum si percoles. Per pietatem, nolo ego cum improbis te viris,
Gnate mi, neque in via, neque in foro ullum sermonem exsequi.
. . . . . .
Hæc dies noctesque tibi canto ut caveas.
. . . . . meo modo, et moribus vivito
Antiquis: quæ ego tibi præcipio, hæc facito:
Hæc tibi si mea imperia capesses, multa bona in pectore consident.

'Keep good company, avoid the debaucheries of the present times, live as I command, and as your forefathers did live; and if to these purposes you submit to my government, good things shall dwell within you.'

§ 8. But we find amongst the ancients some little instances of this honour and reverence besides obedience specified. The ancients would not without leave go from the presence of their father: so he in the comedy[a],

——— neque latebrose me abs tuo
Conspectu occultabo. ———

They would not conceal from their parents the entercourses and accidents of their youth, their amours, their mistresses, their designs of marriage, their little plots, and advantages or disadvantages.

Quæ fert adolescentia
Ea ne me celet consuefeci filium:

that is, they accounted it part of the honour due to their parents, to tell them truth in all things where they were interrogated or suspected.

Nam qui mentiri aut fallere insuerit patrem, aut
Audebit, tanto magis audebit cæteros[b].

He that lies before his father dishonours him, and commits two sins; he transgresses two commandments. Add to this, they counted it impiety to steal any thing from their parents.

Egon' patri surripere possim quidquam tam cauto seni?
Atque adeo si facere possem, pietas prohibet[c].

That it, whatever was a single injury if done to a stranger, was double if committed against their parents[d]: for as to do good to them was piety as well as charity, it was religion and justice too; so to do any evil to them is to do them dishonour, and expressly against the fifth commandment. These are the first general measures, and the indication of very many particulars.

§ 9. But there is one great measure more, and that is, that specification of the duties of this commandment which we find in the laws of nations and the consent of all wise men, and particularly of those with whom we do converse, and by whom we are governed. For our

[a] Trinum. ubi supr. [lin. 2.]
[b] Terent. Adelph. act. i. scen. 1. [50.]
[c] [Plaut. Pseudol., act. i. sc. 3, 56.]
[d] [Prov. xxviii. 24.]

parents have a double power over us, one by the law of nature, and the other by the civil law; that is, there are some duties which children do owe to their parents, which are primely and indispensably necessary, others which are specifications and instances of a general duty, but such which may suffer increase and diminution, but are necessary by virtue of a divine commandment when they are bound upon us by the laws of our country; because these are of the nature of those things whose natures can be changed by becoming laws, and are reduced under the category of their proper virtues. The particulars I shall draw out of the laws of nations, from the civil and canon laws, reducing them to distinct rules shall describe their several obligations of the conscience: and they relate to the other two parts of parental power, signified by Castigation and Piety.

OF CASTIGATION, OR THE COERCITIVE POWER OF PARENTS.

RULE II.

FATHERS HAVE A POWER TO CHASTISE THEIR OFFENDING CHILDREN, BUT NOT A POWER OF LIFE AND DEATH.

§ 1. In the laws of Romulus and Numa[e] fathers had a power three times to sell their children, and a power to put them to death in certain cases: and they attribute much of the prosperity of their city to this permission, nothing being a better instrument to make good citizens, than by making them good sons; it being very unlikely that ever he should command well abroad, that knows not well how to obey at home[f].

> Quicunque patrem timet ac reveretur,
> Hic in bonum civem evadet proculdubio,

said Timocles[g], 'he that fears and obeys his father, without peradventure as he is a good man so he will make a good citizen.' And therefore it was observed by Dionysius Halicarnasseus that amongst the Greeks, contumacy, impiety and parricide were very common; and he gives this reason, because Charondas, Pittacus and Solon did by their laws give the fathers no great power over their children. But I said that the Romans did, and those great examples of Titus

[e] [Dionys. Halic., lib. ii. cap. 27.]

[f] [Οὐκ ἔστιν εὐ ἄρξαι μὴ ἀρχθέντα.—Arist. pol., lib. iii. cap. 4.—Nemo regere potest, nisi qui et regi.—Sen. de ira, lib. ii. cap. 15.]

[g] [Apud Stob. floril. tit. lxxix. 17.]—Si quis inofficiosus fuerit in parentes, omnium magistratuum sit incapax.—Xenoph. l. ii. de dict. et fact. Socrat. [cap. 2. § 13.]

Manlius, C. Flaminius, C. Cassius, who put their sons to death, were indeed very severe, but did imprint great terrors upon all the Roman youth. Bodinus thinks this to be a natural and unalterable power; and Ærodius supposes that God would not have commanded Abraham to kill his son, but that it was a part of his ordinary and inherent power; and when Judah commanded his daughter-in-law Thamar to be brought forth and burned for her adultery, it gave indication that he by his supreme paternal power in the family had power of life and death. And of this there is no question in the heads of families, where the father is a patriarch, the fountain of his nation, or of his society, and under the command of no superior: for the paternal power is the fountain of the royal; and Abimelech was nothing but "the king my father[f]."

§ 2. But when families were multiplied, though fathers were fitter to be trusted with the severest power than any other sort of interested persons, yet because this might fall into disorder, God was pleased in the law of Moses so to order this affair, that the father's power should not be diminished, and yet the execution of it and the declaration of the sentence should be trusted to the judge. For if a father found his son stubborn, rebellious, disobedient, a glutton or a drunkard, all which are personal crimes, and against the private authority and counsel of the father, the father and the mother might delate him to the judge, and without further proof but their own testimony he was to be stoned to death[g]. Drunkenness and gluttony were in no other cases capital in the law of Moses, but when joined with rebellion or disobedience to their parents. And like to this proceeding in Moses' law was the process in the Persian monarchy. For Ælian[h] tells that when Rhacoces the Mardian brought Cartomes his son with his hands bound behind him to Artaxerxes, desiring that the prince would command him to be slain, because he was impudent, he was naught, he was a villain; the Persian king asked him if he could find in his heart to see his son die with violence. The father replied, "I have in my garden a goodly lettuce, fat and wanton and full of leaves. When I find any of them luxuriant, proud and exorbitant, though it be a part of the body I cut it off; and so I do to whatsoever is bitter and superfluous, and my lettuce is the sweeter for it, it does not bewail the loss of its bad leaves, but thrives the better. Think the same of me, O king; for though he be pared away that hurts my family, that gives ill example to his brothers, my flock will be the more thriving, florid and fruitful in all good things." By this instance we perceive that when fathers had not power to put to death their rebellious children, they could require it of the prince, who was to proceed summarily and merely upon the father's instance. And we find in the French annals that Stephen[i]

[f] [אֲבִימֶלֶךְ. Vide Gesen. ad voc.]

[g] [Deut. xxi. 18.]

[h] [Var. hist., lib. i. cap. 34.]

[i] [Probably Etienne Boisleau, provost of Paris A.D. 1261. Felibien, hist. de Paris, lib. ix. tom. i. p. 409.]

Boslee the president of Paris impaled a young fellow because his mother said that she could by no arts or labour keep him from being a thief.

§ 3. But this went off very much in the manners of men; and children were by other means restrained ordinarily, before things were brought to that extremity; and in the civil law parents were forbidden to kill their children[j], and this law hath prevailed in all christendom, excepting that a man is in some places permitted to kill his daughter if he sees her in unchaste embraces. But instead of these great excesses of power, there is left to christian parents nothing but a decent castigation in the lesser and single faults, and disinherison in case of great and persevering. That children are to submit to the animadversions and chastisements of their fathers, is the voice of nature, and of all nations, of scripture and right reason. So S. Paul[k], "We have had fathers of our flesh which corrected us, and we gave them reverence:" and Ben Sirach[l] teaches us, "*In opere et sermone et omni patientia honora patrem tuum*, 'honour thy father in thy work and in thy word, and in all patience,' so the vulgar Latin reads it; that is, suffer what he imposes upon you: and this was it which the young Greek that Plutarch[m] speaks of had learned in Zeno's school, *Didici patris iram ferre;* 'I have learned,' saith he, 'patiently to bear my father's anger.' The authority is plain; the measures of it are only, that it be done for amendment; that is, that it be discipline, not anger and revenge, and that it be done with charity and moderation, which is signified by S. Paul[n], "Parents, provoke not your children to wrath;" which precept he repeats[o], μὴ ἐρεθίζετε, μὴ παροργίζετε, give them no opprobrious words, no contumelious and provoking language, and therefore much less any cruel and undecent castigations.

> Pudore et liberalitate liberos
> Retinere satius esse credo, quam metu.
> . . . . . .
> Hoc patrium est, potius consuefacere filium
> Sua sponte recte facere, quam alieno metu.
> Hoc pater ac dominus interest: hoc qui nequit,
> Fateatur se nescire imperare liberis[p].

A master governs by fear, and a father by love, and both by their authority: but the gentle way is the father's method; but if he will use the severe, he hath authority to do it, and right or wrong he must be suffered, till the evil be insufferable, and then he may decline it, but ever with reverence to his father's honour; for indeed against a father's tyranny there is no aid, no remedy, no intercession,

[j] § final. Inst. de noxa. [lib. iv. tit. 8. § 7.] l. 'Divus,' ff. ad leg. Pomp. de parricid. [Digest., lib. xlviii. tit. 9. l. 5.] et toto tit. C. de his qui parent. vel fil. occid. [Cod. Justin., lib. ix. tit. 17.]

[k] [Hebr. xii. 9.]

[l] [Ecclus. iii. 8.]

[m] [Lege Ælian. var. hist., lib. ix. cap. 33. cf. p. 197 supra.]

[n] [Ephes. vi. 4.]

[o] [Coloss. iii. 31.]

[p] Terent. Adelph., act. i. sc. 1. [57.]

but by an appeal to the common father, the chief of all the tribes and all the families. This only I am to add, that as fathers have not a power of life and death over their children, so neither are they lightly to use that power which they have, and is next to this; that is, that I may use S. Ambrose[q] his expression, *ne læsa pietas patris ulciscatur se exhæredatione vel abdicatione contumacis generis*[r], a power of disinherison is not to be used for every great offence, much less for a little. *Pater, nisi magnæ et multæ injuriæ patientiam evicerint, nisi plus est quod timet quam quod damnat, non facile accedit ad decretorium stylum,* said Seneca[s], 'a father will not easily proceed to an exterminating sentence, unless great and many injuries have quite overcome his patience: nor then neither, unless he fear worse things than those which he already blames.' For, as Quintilian[t] observed well, this power was not given to fathers but when their sons are incorrigible. *Fulmen istud patrum adversus ferociam adolescentiæ datum est, adversus filios qui peccare plus possunt:* 'if they will sin yet more, and will not be corrected, then they may unwillingly use this thunderbolt.' It is like the sentence of excommunication, never to be used but when nothing else will cure the man, and nothing at all will make the mischief tolerable: that is, a son may not be disinherited, but when he may be hated, which may never be, *sine causis multis, magnis et necessariis,* as Cicero[u] affirms. The causes must be great and many, and intolerable, and without remedy. But of these things because the fathers are judges, they must judge according to the permissions of law, and the analogies of christian prudence and charity; for if they do amiss, the child is miserable by the father's passion, and the father by his own.

OF PIETY TO PARENTS.

RULE III.

A FATHER HATH POWER OVER THE GOODS AND PERSONS OF HIS CHILDREN, SO AS TO BE MAINTAINED BY THEM.

§ 1. THE lawyers define the paternal power to be *jus moribus legibusque constitutum, quo patri in filium bonaque ipsius plenum*

[q] Epist. xx. [al. lxxvi. tom. ii. col. 1089 D.]
[r] ['pignoris.' ed.]
[s] Lib. i. c. 14. de clement. [tom. i. p. 451.]
[t] Declam. [cclix.]
[u] Orat. pro Rosc. Amer. [cap. 14.]

jus olim tributum fuit[x]; 'a full right upon his son and his son's goods introduced by laws and customs.' Now this full right is alterable by the civil law of any nation: that is, whereas amongst the Romans whatsoever the son acquired, he acquired it not for himself, but for his father; this may determine sooner or last longer, according to the appointments of law; for "the heir so long as he is a child differs nothing from a servant[y]," and therefore if the law please, may be used accordingly; and when the law hath so appointed, the conscience is bound by it.

§ 2. But that which is not alterable by laws is that which is the natural and necessary duty, that parents be maintained by their children if they need it: for this is in the commandment, this is a part of the honour that is due to them. For so our blessed Saviour remarks the *ἀντίθεσις*: the pharisees that taught the children to cry *corban*, 'it is a gift,' and therefore out of it the parents must not be profited, he calls it 'a not honouring the father and mother[z];' and the 'double honour' which S. Paul[a] commands to be given to 'the elders that rule well' is instanced in the matter of maintenance. And this the heathens had. So Hierocles[b], *γονέας τιμήσωμεν ὑπερβαλλόντως, σώματος ὑπηρεσίαν καὶ χρημάτων χορηγίαν ὑπέχοντες ὅτι μάλιστα προθυμοτάτην*, 'let us greatly honour our parents, affording them the ministry of our bodies and the use of our wealth most cheerfully.' But this Cicero[c] limits to the *necessaria vitæ præsidia, quæ debentur his maxime*, 'the necessary aids of life;' that is, what is for their support, to keep them from need and shame, according to the quality of the parent and ability of the child: so that this be first respected, and then that, saith Bartolus[d]. To this purpose is that of S. Ambrose[e], "If the contumely of the father and the reproaching or vilifying of the mother be punished so severely, what shall their starving or their beggary be?" This the Romans did resent so deeply, that they made a law that if a son that was emancipated or quitted from his father's government did deny aliment to his indigent father, he was to be reduced under his father's power, and so to abide for ever[f]. But by this instance it is apparent that this is no part of the father's power, but is an office of the son's piety. For between the father and the son there is a threefold cord or tie, as I have already observed, the band of Reverence, of Castigation, and Piety; the two first are the father's authority, this last gives the father properly no right, but obliges the son directly. But then this is to be added, that this obligation is only confirmed by the

[x] Sebast. Monticul. de patria potest. [§ 21. in tractt. univ. jur., tom. viii. part. 2. fol. 128 a.]
[y] [Gal. iv. 1.]
[z] [Matt. xv. 6.]
[a] [1 Tim. v. 17.]
[b] [In Pythag. carm. aur., p. 44.]
[c] Offic. i. [17.]
[d] In l. 'Libertis,' § 'Manumissis,' ff. de alim. [Digest., lib. xxxiv. tit. i. l. 18. § 1.]
[e] In Luc. xviii. [tom. i. col. 1491 D.]
[f] L. unic. C. de ingrat. liber. [lib. viii. tit. 50.]

civil laws, but it is immediately tied upon him by the natural: for a son is bound to keep his father from starving though he be a bandito or an outlaw, that is, though he have lost all civil rights, because no civil power can prejudice a divine commandment. Plutarch[g] tells that by Solon's law the son was not bound to give his father aliment if his father caused him to learn no trade, or taught him nothing whereby he might get his living. Indeed if the father neither did give him whereon to live, nor teach him whereby he might get it himself, the son is the less obliged; but yet sufficiently for this, because it is by a law of nature that he is obliged, and all such obligations are before such conditions can intervene. Πῶς ἂν ὁ γεννηθεὶς ἀντιγεννῆσαι δύναιτο τοὺς σπείραντας; said Aristotle. Something else is to be considered besides the advantages of education: the father was the principle of his being, and in that he can never be requited in kind, and therefore let him be paid by duty.

§ 3. But if the case be such as divides the duty, and the money cannot be divided, what shall then be done? Marco Tomaso a tradesman in Venice had a father and son, both lame, both in great necessity. The father lost all his goods to the Turks, and the son had rowed in the galleys till all his strength and health was gone; but the poor cutler (for Tomaso was no more) was not able to relieve them both: what shall he do? The case here is hard. But love descends, and ascends not: therefore Tomaso's bowels yearn upon his son; and he cannot have that tenderness for his father, and he were unnatural if he should let his son perish. It is true, but therefore he ought not to neglect his father and feed his son, because his son does not, cannot love him so well as his father does; and therefore he is obliged by gratitude to his father, and by tenderness to his son; to this there is more natural inclination, but to the other there is more natural duty. And therefore the lawyers say that *amor descendit, non ascendit,* is to be understood *quoad ordinem dilectionis, non quoad effectum obligationis.* 'Love does descend,' but it should not in some cases. And therefore when the law gives leave that a son may by his father be sold to keep the father from starving, it shews plainly that the father is in cases of necessity to be preferred.

§ 4. And this indeed by the help of the civil laws brings this rule to an instance of paternal power; for a father in this law hath a right over his son, and can deliver him to labour and service for the necessary support of his helpless father. This we find done frequently,

> —— Et tandem demisso in viscera censu,
> Filia restabat non isto digna parente:
> Hanc quoque vendit inops[h].

And Eusebius[i] tells it was done in the time of Maximianus the em-

[g] In vita Solon. [cap. xii. tom. i. p. 360.]

[h] [Ovid.] metamorph. viii. [846.]

[i] [Hist. eccles., lib. ix. cap. 8, p. 448.]

peror; and the prophet Jeremy[k] brings in the people complaining in a time of famine, "Our sons and our daughters are too many, let us take corn for their price, that we may eat and live." But this being only in the case of extreme necessity is not to be drawn to any thing else, for this power is only just when it is unavoidable; and therefore it is permitted in laws, which do therefore so comply with the necessity, and endeavour to find a remedy, or to make it tolerable, that in such cases the judges, if there be a contest in the particular, are tied to proceed summarily; and if a son should pretend causes of excuse from giving aliment to his father during the whole contestation, and till the proof be made, the son is tied to maintain his father in the interval; so careful are the laws to secure the performance of this duty, for the omission of which all the world hath observed great marks of the divine displeasure, expressed in judgments, and particularly of immature deaths; so Homer[l] observes of Semoisius,

——— οὐδὲ τοκεῦσι
θρεπτρὰ φίλοις ἀπέδωκε, μινυνθάδιος δὲ οἱ αἰὼν,

'he refused to nourish his loving parents, and therefore he lived but a short life.'

§ 5. One particular more is to be added, and that is, if an indigent father have a rich father living, and a rich son, although both are obliged to nourish him, yet it is in the father's power to burden the son and to excuse the grandfather; that is, the power which the father hath over the son can require this duty: the grandfather is equally obliged, but the son hath no power over him, the law hath. For as for the thing itself there is no other difference in it. But if the rich father refuses he is worse than an infidel, if the rich son refuses he is impious; the first is unnatural, and the second is ungodly; the first is a heathen, and the other is no Christian; the grandfather hath no bowels, and the grandchild no gratitude; the first hath no humanity, and the other no religion; so that it is an even lay between them which is the worst: but the necessitous father may put the duty actually upon the son by reason of his paternal power, that is, he may so order it, that if the son refuses he is not only uncharitable, but undutiful also, he commits two great sins; whereas the refusing grandfather commits but one, though that also be enough to bring him an extreme damnation.

[k] [Read, Nehemiah v. 2.]

[l] Iliad. iv. [477; cf. lib. xvii. 301. The passage has been similarly misapplied by Andrewes (Pattern of catechistical doctrine, part ii. chap. 1. § 2. p. 65. 8vo. Oxf. 1846.), and Saravia (quoted by Hacket, life of Abp. Williams, part ii. § 74. p. 75. fol. Lond. 1693).]

RULE IV.

THE FATHER'S POWER DOES NOT EXTEND TO MATTER OF RELIGION AND PERSUASIONS OF FAITH.

§ 1. In the law of the twelve tables it was written, *Sacra privata perpetua manento,* that 'the private religion of a family should not be altered:' which Cicero[m] expounds to mean that all those to whom the care of the father of the family did appertain were tied to the celebration of the same rites; and the lawyers say, that *Filii sunt in sacris parentum dum sunt in eorum potestate*[n], 'children are within the holy rites of their parents while they are in their power.' And indeed this is very true in the court of conscience so long as their understanding is in their father's power; but that is of all things first emancipated: when a son can choose for himself, when he is capable of malice and perverseness, when he is judicable by external and public laws, then he is emancipated and set free, so as he can choose his religion, and for that the father hath no other power over him but persuasion and instruction. For it is very observable that as it was said of the law of Moses, it was a 'schoolmaster to bring us unto Christ,' so it is true of the *imperium domesticum,* 'the father's government,' it is a pedagogy to bring us to the obedience of the laws both of God and man: the father's commands are exacted before the laws of God or princes do require obedience; because the government of children is like the government of the sick and the madmen, it is a protection of them from harm, and an institution of them to obedience of God and of kings; and therefore the father is to rule the understanding of his child till it be fit to be ruled by the laws of God; that is, the child must believe and learn, that he may choose and obey; for so we see it in the baptizing infants, the fathers and susceptors first choose the child's religion, and then teach it him, and then he must choose it himself. For the father's authority to the understanding of the child is but like a false arch or temporary supporter, put under the building till it can stand alone: and it only hath this advantage, that the father hath the prerogative of education, the priority of possession, which how great it is all the experience of the world can tell. But that this is part of the paternal power is evident, because no child is to be baptized without his father's will. A Turk, a Jew, a heathen can reckon their children *in sacris parentum*[o]; they have power, a natural and proper power, to breed up their children in what religion they please, but not to

[m] Lib. ii. de legib. [cap. 9.]

[n] Alciat. lib. 1. præterm. in verb. 'Sacra.' [tom. vi. fol. 87 a.]

[o] Panormit. in cap. 2. de convers. infid. [part. 3. fol. 173 a.] et Baldus in l. 'Item in potestate,' ff. de ju. person. [in digest., lib. i. tit. 6. l. 3.]

keep them in it; for then when they can choose they are under no power of man, God only is the Lord of the understanding: and therefore it is no disobedience if a son changes his father's religion, or refuses to follow his father's change, for he cannot be injured in that where he hath no right and no authority.

§ 2. But this is so to be understood that the religion of the son must at no hand prejudice the father's civil rights, so that he must not quit his father's house, if he be under his father's power, and by the laws of his country be obliged under that government. Vigoreus in his sermon of S. Martin, tells that S. Martin being but a catechumen and yet unbaptized did still abide with his father and mother though they were heathens, and he nevertheless did all the offices of a Christian. And there is in this great duty, because one right must not destroy another; and a man may be of what religion he please without doing wrong to any man, for a man cannot be hindered in his persuasion, for though he dies he is of that religion; but no good religion does warrant the son to do wrong to his father's legal rights. And therefore Marius Victor[p] observes of Abraham,

Verum mente Deum venerans, gentilia sacra[q]
Aversatus erat. ——

He was a great hater of his father's idolatry and the impious rites of his family, yet he did not leave his father's house till after his father's death.

Linqueret ut sedes[r] patrias, terramque nocentem,
Pollutamque domum,

Nisi postquam more parentis
Jussa sequi jam posse Dei sine fraude licebat.

He might do it justly when he had no just power over him to restrain him by the cords of another justice and a differing duty.

§ 3. There is only this variety to be added, that when either of the parents is christian, and the other infidel, the son is to be reckoned to the believing parent: the effect whereof can be this, that he or she that believes hath a right to educate the children in christianity without injury to the other, and the church may baptize the children against the will of the unbeliever: and the reason of this is, the prerogative of God and of Christ who is head of the church, and the sovereign of all the world; for if the child is sanctified and made holy by the believing parent, then it may be brought to Christ; that sanctification of it is Christ's seizure of it, it is His right, because He hath made a covenant with the parents for themselves and for their children.

§ 4. This is practised in the countries of the Roman communion to evil purposes; and if the father be a heretic in their account, they

[p] Lib. iii. comment. in Genesin. [Max. bibl. vet. patr., tom. viii. p. 424 F.]

[q] ['semper.']

[r] ['Linque procul sedes,' &c.]

teach their children to disobey their parents, and suppose heresy to destroy the father's right of power and government. Between Christian and Christian there is no difference as to matter of civil rights; no law allows that: but between heathen and Christian, so far as the soul is concerned, the right of Christ is indubitable; for we are sure christianity is the true religion: but amongst the sects of Christians the case is wholly differing, for they may both have enough to secure the souls of pious persons, and yet may both be deceived in their question and unnecessary article.

RULE V.

THE FATHER'S POWER OVER THE CHILDREN CAN REMIT AN INJURY DONE TO THEM WITHOUT THEIR LEAVE OR CONSENT.

§ 1. THE reason of this depends upon the former considerations, and is to have its understanding accordingly. So long as the son is within the civil power of the father, so long as he lives in his house, is subject to his command, is nourished by his father's charge, hath no distinct rights of his own, he is in his father's possession, and to be reckoned by his measures, and therefore cannot have any actions of injury for his own amendment.

§ 2. But this is to be limited only to the effects of law and external courts and trials of right, or external actions of injury. For although a son cannot repeat what the father hath legally acquitted, yet if it be a personal action, in which charity and peace are concerned, the injurious person is bound in conscience to ask the son forgiveness, upon the account of S. Paul's[s] words, "Follow peace with all men, and holiness," and, "for as much as is possible live peaceably with all men[t];" which no man can be said to do who hath done wrong to a person, to whom he will not do right. For besides the relation and the communication of its effect between father and son, the son is a person too, and in personal actions hath an interest naturally and unalterably, which no fiction of law, no supposition of case can take off. So that all the legal and external obligation the father may remit, but in the personal there is something of proper concernment.

§ 3. This is also to be limited to an entercourse with extraneous persons, and is not true in actions between the son and a conjunct person to him. As if the injury be done by a wife, or a spouse, or a freedman, or a person endeared and obliged by the son, the father

[s] [Heb. xii. 14.] [t] [Rom. xii. 18.]

cannot remit any such injury. The reason is, because although by the force of the civil or municipal laws the son be supposed to be still in the father's power, yet in such things he hath some peculiarity, and is as to those things free and in his own power. If the son's wife commit adultery, the father cannot forgive it, though the son be under his father's power by law; because as to all personal actions the son hath a personal right, and such things have great dependence upon the law of God and nature, and these things to some great purposes do not at all communicate with the civil laws.

§ 4. Lastly, this rule is so to be understood and practised, that it be no prejudice to the just interests of any other: and therefore a father cannot so forgive an injury done to his son, that he shall be tied not to witness it in public when he is required by the civil power; for it may concern the commonwealth that the criminal be punished, when it may become the father to pardon his and his son's share. He may remit all with which he hath to do, but not that which may pass into the exchequer. But in such cases the judge may enquire, but the son without the father's leave may be no voluntary accuser.

RULE VI.

A FATHER'S AUTHORITY CANNOT ABIDE AFTER HIS DEATH, BUT THE SON'S PIETY TO HIS FATHER MUST, AND MAY PASS UPON HIM SOME INDIRECT OBLIGATIONS.

§ 1. THE son after his father's death is as much lord of his person and his estate as his father was: and therefore although all the actions which the living father did, which by law or the nature of the thing have a permanent effect, still do abide as they were left; yet those things which are of an alterable nature, and to be administered by new counsels, and to be determined by emergencies and proper circumstances, or are directly subject to empire, or are personal concernments, these are in the power of the son after his father's death. A father cannot by his power command a son to marry a person whom the father does, but the son does not love: he cannot command the son by a just and a sufficient authority never to be a priest, or bishop, or a magistrate: for in those things in which his own mere interest is concerned, his own understanding must be his guide, and his will his ruler, for he alone does lie at stake whether it be good or bad; and it is not reasonable that he should govern who neither gets, nor loses, nor knows.

§ 2. But though the father's authority be extinct, yet his memory

is not, and there is piety towards the dead, and to parents much more; and of this the heathens gave some worthy examples. Herodotus[u] tells that the Issionides[x], a people of Scythia, did use to embalm their father's head, and then to cover it with gold, and use it for a divine image, and pay to it the veneration of a yearly sacrifice. This they intended for an honour to their dead father: but in this there were no signs of obedience. Nearer to this was that which Tertullian[y] tells of the Nasamones, that they took their oracles at the graves of their fathers, as supposing the souls of their progenitors to have some right or care to conduct their children. But it was a pretty story that Ælian[z] says the Brachmans tell of a certain king of the Indians that had many sons, who being all of them (the youngest only excepted) immorigerous and rebellious, at last drove their father and mother from their kingdom; and they with their youngest son wandering in strange places were quickly consumed with age and weariness and inconvenience. The young son seeing his parents dead, burnt their bodies, and striking his head with a sword, put the ashes into the wound, by that act of piety giving his parents the most honourable sepulture, but with it also emblematically representing that his parents even after death had power upon his head, and that his head ought to be submitted to them. And it was well; if piety goes before, whatever duteousness or observance comes afterwards it cannot easily be amiss.

§ 3. Piety sometimes does more than authority can. *Plus potest patria potestas in liberos quam lex, legiove, aut summa dictatura,* say the lawyers; a father or a mother can prevail, when a consul or a prince cannot. *Cum Martius Coriolanus pergebat infesto agmine adversus patriam, quis illi arma succussit e manibus nisi una Veturia?* saith the Roman story: 'Coriolanus took up arms in rage against his country, and no authority could disarm him but his piety to his mother Veturia.' Now this principle is a good one; but it hath no limits of itself, but only what we give to it ourselves by prudence, and necessity, and the nature of the things that are to be done. But in things that are pious and prudent, or that are innocent and indifferent, a dying father's desire or a living father's counsel ought to be esteemed sacred: and though they make no law, yet they pass an indirect obligation; that is, if they be transgressed without reason, they cannot be transgressed without impiety. It is certain, God is pleased with this obedience of piety, as is apparent in the case of the Rechabites; and such actions are exemplar in a family, and make the name of father venerable and sacred; and sometimes the neglect of a dying father's charge hath met with a sad event; and a petulant disobedience hath been a rebellion against the greatest reason, which sometimes is the greater by how much it ought the more to be concealed. Philotimus of Athens having observed his son given to

[u] Lib. x. [lege iv. cap. 26.]
[x] [Ἰσσηδόνες.]
[y] De anima, cap. lvii. [p. 306 B.]
[z] [Hist. animal.] lib. xvi. [cap. 5.]

amours and wandering fancies, upon his death-bed charged him by all that was sacred and profane, that however he did resolve to please his fancy and satisfy his impotent desires, he should be sure not to court or to fall in love with Pægnium. Philotimus dies, and Philodectes his son having quickly dried up his tears which were caused by the smoke of the funeral pile, hath a great curiosity to visit this pretty Greek that his father had so forbidden to him. He sees her, likes her, courts her and lies with her; and in the first night of their congress, she being overpleased, told him that she infinitely preferred his kindness before the dull embraces of his father Philotimus which had so often tired her. Upon this the young man starts and trembles, and finds his sin and shame, the rewards of an impious disobedience. His want of piety to his dead father made him incestuous in his mixtures and impious in his lusts. And Pausanias[a] telling of a father who meeting his son in Charon's boat did then attempt to strangle him, to revenge his impiety and disobedience, by this does represent what their sentence was concerning the resentment of rebellion of sons and their undecent stubbornness even after death.

§ 4. And this is of so much the greater regard, if the father charges it upon the son upon his blessing, and with great imprecations: for then unless the father be evidently a light or trifling person, there is to be supposed some great reason for the imposition, and then nothing can warrant the laying it aside, but a great necessity, or a very great, good, and certain reason to the contrary; that is, such a cause as may make the contrary effect to be infinitely unlike any image of impiety or disregard. But of this parents also must be very cautious, and not to put a load of duty upon a trifle that ought not to bear it. For he is foolish that upon his blessing will command his son to make much of his sparrow or his monkey; and that son is prodigal of his father's blessing, that will venture it all to please his humour and his itch of liberty.

RULE VII.

NEITHER THE FATHER'S AUTHORITY NOR THE SON'S PIETY CAN OBLIGE THEM TO DO AN ACTION AGAINST THE LAWS OF GOD, OR OF THE FATHER'S AND OUR JUST SUPERIOR.

§ 1. This rule although it seems to contain in it nothing but what is ordinary and confessed, because God is rather to be obeyed than man, and amongst men the supreme rather than the inferior, yet I

[a] Lib. x. [cap. 28. § 4.]

have here described it, because the explication of it will not only contain one great measure of our duty and conduct of conscience, but it will give the full general proportion of the father's power and the son's piety, and also very much endear the obedience and piety of children.

§ 2. When Bias had discoursed well and wisely that God was present in every place, he soon after argued weakly, If God dwells in all places, His presence makes all places holy, for it is His presence that hallows a temple, and then there can be no such thing as sacrilege; for a thief that robs a temple cannot carry it out of a temple, but by carrying it into another. And upon such a trick as this some in A. Gellius[b] did argue that we were not to obey our parents. For either they command that which is good, or that which is not good: if of itself it be good, then for its own sake we are to do it, not for their command; but if it be not good, then though they do command it, it is not to be done at all. For these men supposed there is necessity and holiness in every lawful action, as the other did suppose there was holiness in every place of God's abode. But this sophistry is quickly discovered. For besides that every thing is not necessary to be done because it is good, but many are left to our choice to do or not to do them, there are many things also which are not good in themselves, but only become so when they are commanded. In both these cases the authority of our parents is competent. For if they be in themselves good but not necessary, by the command of our parents they are made necessary and pass into a law. But if they be not good of themselves, but when they are commanded become good, then also they become necessary. A. Gellius instances, *in militiam ire, rus colere, honores capessere, causas defendere, uxorem ducere, uti jussum proficisci, accersitum venire*, 'to go into the country or to stay in the city, to live at court or to live in your farm, to take up arms or to be a merchant, to marry a wife, and to come when you are called,' and to work in the vineyard, these things of themselves are innocent and harmless, but not necessary of themselves; *propterea in ejusmodi omnium rerum generibus patri parendum esse*[c], 'in all things of this nature we are to obey our father.' But add this also, that if it be of itself a duty, and of that nature that it ought to be done, *sive imperet pater sive non imperet*, whether his father command or no, yet even here also the father's command is of great authority and great effect; for it adds a new law to the old commandment, and therefore the disobedience is guilty of a new sin.

§ 3. But in things dishonest and impious the father hath no authority to give a commandment; and if he does, the children are bound not to obey. If the father commands the son to marry a wife, to plead a cause for the guilty, *obsequendum est*; there is no more to

[b] Noctt. attic., lib. ii. cap. 7. [§ 7.]

[c] Idem ibid. [§ 18.]

be said, the father must be obeyed. But if he command the son to marry a harlot, an impudent woman, a drunkard, or to be an advocate for Catiline or Clodius, for Ravaillac or Guido Faux, he is not to be obeyed, *quoniam accedente aliquo turpitudinis numero, desinunt esse per sese hæc media et indifferentia*[d], 'when any turpitude is mingled with the action, it is no longer indifferent, or subject to command.' And therefore we find Acrotatus[e] commended among the ancients because when his parents had required of him to do an unjust thing, he answered, I know that you are willing I should do that which is just, for so you taught me to do. I will do therefore that which you desire I should, but what you bid me I will not do.

§ 4. And yet if a father commands an unjust thing, his authority is not wholly nothing. For first, 1) though it must not be obeyed, yet it must not be dishonoured, nor yet rejected but with great regard. *Quædam esse parendum, quædam non obsequendum*, said some in A. Gellius[f], *sed ea tamen quæ obsequi non oportet, leniter et verecunde, ac sine detestatione nimia, sine opprobratione acerba reprehensionis, declinanda sensim et relinquenda esse dicunt, quam respuenda.* What is not fit to be obeyed, must be declined and avoided rather than railed at and rejected with reproach. *Etiam in bona causa filii apud parentes debet humilis esse oratio*, said Salvian. When a son denies his father he must do it with the language of obedience. Such as was the answer of Agesilaus[g] to his father when he would have had him to give judgment against the laws, *A te, pater, a puero didici parere legibus, quamobrem nunc quoque tibi obtempero, cavens nequid faciam præter leges*, 'thou hast from my childhood, O father, taught me to observe the laws; therefore even now also I obey your command, because I take care not to break them.' For whatsoever the command be, yet the authority is venerable; if the command be unholy, yet the person is sacred. *Liberto et filio semper honesta et sancta persona patris et patroni videri debet*, said Ulpian[h], 'the person of a father is always honest and venerable to the son, and so is that of a patron to his freed man.'

§ 5. 2) Though the command is not to be obeyed in things dishonest, yet that then also the father's authority hath in it some regard appears by this, that if a son transgresses the law by the command of his father, his punishment is something the more easy upon that account, though the offence be great, *l. fin. De bon. damn.*[i] But if the offence be little he is wholly excused, saith the law, *l.* '*Liberorum,*' § *fin. et seq. De his qui not. infam.*[j] Thus if a son by the command of his father marries a widow within the year of mourning,

[d] A. Gell., ibid. [§ 20.]
[e] [Plutarch. apophth. Lacon., tom. vi. p. 811.]
[f] [ibid., § 4, 13.]
[g] Plutarch. lib. de vitios. verecund. [tom. viii. p. 116.]
[h] [Digest., lib. xxxvii. tit. 15. l. 9.]
[i] Digest., lib. xlviii. tit. 20. l. 7.]
[j] [lib. iii. tit. 2. l. 11.]

he does not incur infamy by the law, say the doctors. *Velle enim non creditur qui obsequitur imperio patris vel domini*, saith the law; and *Venia dignus est qui obtemperavit*, saith Ulpian[k]: 'if he did obey the command of his father, he is to be pardoned,' it was not his own will; that is, not his absolutely, but in a certain regard, and in a degree of diminution.

§ 6. 3) The father's authority hath this effect also upon children, that if the father does wrong, the son must bear it as long as it can be borne: and therefore the son may not go to law with the father, and complain of him to the judge, without leave of both their superiors. For if by any means the son can make the father less than he is, it will destroy all duty, and dispark the enclosure which nature and the laws have made with fear and reverence.—But this hath a double consideration, the one in religion, and the other in laws;

§ 7. 1) In religion we are to consider not only what is lawful in the precise question, but what is to be done in the whole complication and practice of it. For if the supreme can give leave in some case for a son to complain of his father to a judge, then in some cases it may be lawful to do it, that is, in those cases in which the law hath specified and restrained the paternal power, in those things which the laws call excesses and injuries, and which indeed in themselves are cruel and intolerable. For in such cases the laws are a guard and defence to the oppressed son; concerning whom although it is supposed that the father takes sufficient care to keep him harmless, yet if the father does not, the law does: and the law does indeed allow the greatest power to fathers, because it presumes it will be for the child's good; but because there are some persons whom no presumption can measure, who are wicked beyond all the usual temptations and infirmities of mankind, therefore even in extraordinary cases there must be some provision; and therefore it is not to be supposed that it shall for ever be unlawful for sons to complain of their fathers to the prince. But what those cases are we can be taught by nothing but by the laws themselves, and by our own natural necessities. We must cry out when we cannot forbear, and we must throw off the burden under which we cannot stand; only we must not throw it off as a wild horse does his load, and kick it with our feet, but we must lay it as gently down as we can. Thus if a father refuses to give patrimony to his son who cannot be otherwise provided for, the aid of the prince or any superior that can rightly give us remedy may be implored. If a father beats his child till he lame or dismember him, or endanger his life, the son can be remedied, and without breach of duty can implore it. So long as a child is in his father's house, and under his father's power, these are the only causes in which he can be allowed legally to complain: because in all other things he is entirely under his father's power. But when he is emancipated, and quit from his direct authority, which

[k] [ubi supra.]

the lawyers signify by the power of castigation, then the son hath distinct rights, and in them because he can be injured, there are more causes of difference. To this therefore the answer is,

§ 8. That in matters of contract, in little injustices, in any thing that is tolerable, in such things the suffering of which can consist with charity to ourselves and piety to our relatives, if a son does contest with his father at law, it may be it is no proper act of obedience, and there is nothing of rebellion in it against his just authority: but there is also as little of piety; especially if we consider that such contests at law are extremely seldom managed with ordinary charity, and never without the greatest reproach on one side, and scandal on both: and if the son can secure that on his own part, yet whether that seeming undutifulness, and more than seeming want of pious and loving regard, may not exasperate the father into angry cursings and evil thoughts, is a consideration of religion which ought to be taken care of by all that would be innocent. There is not one of a thousand that goes to law at all but he runs into so many temptations that it is very hard for him to do right and to do nothing that is wrong: but not one in ten thousand can justify his cause and his person too, if he goes to law with a father. And he will for no cause suffer wrong at any man's hands that will take no wrong of his father; and he that does so, will give but an ill account of his christianity.

§ 9. 2) And these things appear the more by reason of the open dislikes which the law professes against such proceedings. For look at this thing in law, and we find that the laws express the son's obedience in universal terms; *Omnibus quæ pater imperat parendum*, 'sons must be obedient to their parents in all things.' Now if the dispute be betwixt our obedience to God or to our parents, it is an ill case; we know whom we are to obey, but the dispute itself is not good; and the very making a question of either is a disadvantage to the honour of both: and therefore the law, which never supposes a question to be between God and our father, does not think it fit to make this to be any exception to her indefinite terms; and therefore Tiberius[l] said it without a limitation, *filium non posse detrectare jussa patris;* and Turnus against Tarquin said summarily and clearly, *nullam breviorem esse cognitionem quam quæ inter patrem et filium, paucisque verbis transigi posse; ni pareat patri, habendum infortunium*[m], 'between a father and a son the proceeding is short, and the case quickly summed up; either let the son obey, or let him be punished.' And the law accounts it a diminution of such supreme authorities, to have exceptions and reservations expressed in the first provisions of the law; and the very making God and the father to be the opposite and compared persons in the question, is to lessen them both. *In comparatione personarum inest læsio et injuria*, say

[l] [Tacit. annal., lib. iii. cap. 17.]

[m] [Liv., lib. i. cap. 50.]

the lawyers; 'there is some wrong done when you compare two eminencies.' Therefore in this case, if ever any such thing does happen, without dispute we know what we are to do: but it is not good that the laws should take public notice of it before-hand. But if the question be between the father and the son, the law is so great an enemy to all such questions, right or wrong, that the law judges for the person of the father, even when it does not like the cause. It does so in the case of all superiors in some degree, and therefore much more in the case of fathers. *Jus quod deprimitur aufertur*, 'if you lessen the authority you take it away;' and then you do injury, though by doing of right. When Accia Variola questioned her father's testament, because he had left immoderate legacies to her mother-in-law, the fathers of rich families were present in great numbers, and the sons of those families attended for the sentence in great and anxious expectations, looking which interest should get the advantage. But the judges very wisely left the case undetermined, because it was hard on the father's side; but they were resolved never to leave a precedent in which the children should be in any thing superior to their fathers: or that as death and love changed their quivers, so old age should be reckoned as void of counsel, and wisdom and prudence should be the portion of young men.

RULE VIII.

IT IS NOT LAWFUL FOR CHILDREN TO ENTER INTO ANY LASTING COURSE OF LIFE AGAINST THE WILL OR APPROBATION OF THEIR PARENTS.

§ 1. This rule contains two great cases. The first is concerning the states of religion; the other is concerning the states of civil life.

§ 2. First, it is not lawful for children to take upon them any religious vows, or enter into any of those which are called states of religion, viz., to take upon them the state of single life, to be priests, monks, friars, hermits, or any thing of the like nature, without the consent of their parents.

§ 3. Thomas Aquinas entered into the Dominican order, and became a friar without the consent of his parents: and that unjustifiable action begat a more unjustifiable doctrine, *post annos pubertatis posse liberos se voto religionis obligare, absque voluntate parentum*[n], that after fourteen years of age or the first ripeness, it is lawful for

[n] 2. 2ᵉ. qu. 88. art. 9. [tom. xi. fol. 217 b.]

children to take upon them the vows of religion, 'whether their parents be willing or unwilling.' And after his time it grew into a common doctrine and frequent practice; and if a monk could persuade a young heir, or a pregnant youth into their cloisters, they pretended to serve God, though certainly they served themselves, and disserved a family[o]. The ground they went upon was, the pretence of the great sanctity of the state monastical; that it was for God and for religion; that to serve God no man that can choose hath need to ask leave; that if the father be superior, yet God is the supreme; that it is *corban;* that if the young man or maiden be given to God, he is given to Him that hath more right to him or her than his parents; that religion in all things is to be preferred; and that although the parents have a right over the bodies of their children, yet of their souls they are themselves to dispose, because theirs is the biggest interest and concern: and whereas God hath commanded to honour our father and mother, we know that God is our father, and the church is our mother; and what does accrue to these, is no diminution to the other's right.

§ 4. Against all these fair pretences it is sufficient to oppose this one truth, that religion and piety cannot of themselves cross each other, but may very well stand together, and nothing is better than to do a necessary duty. And there needs not much consideration to tell which is better, to make our love to God and our love to our parents and our duty to them both to stand together, or to fight one with another. God intends the first, that is certain, for He is not the author of division, nor hath He made one good contrary to another. For if one be set up against another they are both spoiled. For that duty that goes away is lost; and that duty which thrust it away hath done evil, and therefore is not good. If therefore it be possible to do our duty to our parents, and to love God greatly at the same time, there needs no more to be said in this affair, but that we are to remember that a man may greatly serve God, and yet never be a friar or a priest; and that allowing or supposing that these are great advantages, or rather engagements of duty, yet it is certain that no state of perfection can be set forward by doing evil; and he enters ill into the state of perfection that passes into it by the door of undutifulness.

§ 5. Now then we are certain of this, that parents have the first right and the first possession, and that to dispossess any one of his rights against his will is great injustice, and therefore that no end can sanctify it; and that it would be a strange religion which teaches impiety for pious considerations: and therefore without further enquiry, it follows that a son may not upon any pretences of a religious manner and circumstances of life subduct himself from his father's power, and put himself under other governments with which his father shall have nothing to do. A son hath no power over himself,

[o] Bellarm., lib. ii. de monachis, c. 36. [tom. ii. col. 582.]

for he belongs to and is under the power of another; and therefore if he does subduct himself, he is undutiful, and impious, and unjust, and does not honour his father and his mother. But he that does persuade the son from his father's house into a monastery, is *reus plagii*, he is a man-stealer. *Qui patri eripit filium, educatori alumnum, domino servum, . . Deo efficit impium, educatori ingratum, domino nequam*, said Tertullian[p], 'he that debauches a son, a pupil, or a servant, and snatches them from their father, their guardian, or their lord, makes them impious, ingrateful, and vile.' And because this was done by some upon pretence of piety, the council of Gangra[q] forbad it upon a curse. *Quicunque filii a parentibus prætextu divini cultus abscedunt, nec debitam reverentiam impendunt illis, . . anathema sint.* Pretence of the divine service is no good warranty for disobedience to parents; and they who so neglect their father's blessing, will meet with the curse of their mother. And this canon was cited and renewed in the sixth council of Constantinople. The council of Tribur[r] forbids expressly a young maiden before twelve years of age to enter into a monastery without the consent of her guardian. Gratian[s] citing this decree, adds something of his own; for it is not known whence he had it, except from the degenerous and corrupt practices of his own times. *Si vero in fortiori ætate adolescens vel adolescentula servire Deo elegerit, non est potestas parentibus prohibendi*, 'if the young man or maiden be of greater age, the parents have no power to forbid him:' which is a clause which is not to be found in the codes of councils, in any editions old or new. But when monastical life had reputation and secular advantages upon religious pretences, then the advocates and promoters of it were willing by right or wrong to set it forward. But the corruption is plain, and apparently against the doctrine and practices of the fathers of the church.

§ 6. S. Ambrose[t] and S. Austin[u] say that a father or mother ought not to hinder a son or daughter from entering to a monastery. But then things were so ordered that the entry thither was not a perpetual bond, but a going thither as to a christian school, a place for institution and holy practice, and from thence they might return when they would, they might serve God and their parents too: the profession of a monk was then nothing else but *priscæ liberæque vitæ ac pure christianæ meditatio*[x], 'a meditation and institution of a christian life according to the rate of the primitive simplicity, liberty, and devotion.' But besides this, though they exhort parents not to hinder their children, yet they affirm that they have power to do it,

[p] Advers. Marcion. [vid. lib. i. cap. 23. p. 377 C.]
[q] Can. 16. [tom. i. col. 538.]
[r] [can. 24. tom. vi. col. 446.]
[s] [Decret., part. 2. caus. xx. quæst. 2. can. 2. col. 1333.]
[t] Lib. i. de virgin. [cap. 11. tom. ii. col. 161, 2.]
[u] Epist. 109, 10. [qu. ut infra?]
[x] ['otium sanctum.'] S. Aug. epist. ad Bonifac. comit. [epist. ccxx. col. 812 G.]

and they may if they will; as appears amply in S. Austin's epistle to Ecdicia[y], and in his two hundred and thirty-third epistle to Benenatus[z]. But most plainly and dogmatically it is affirmed by S. Basil[a], *liberos non esse recipiendos in monasteriis, nisi a parentibus suis offerantur,* 'children are not to be received into monasteries unless their parents present them:' and when S. Gregory Nazianzen[b] had against his father's commandment run into a monastery, he began to bethink himself what he had done, and found that without impiety he could not be contumacious against his father, and therefore left his solitude and returned home. *Et hoc facio,* saith he, *jussu Dei magis quam hominum metu: itaque, O pater, dicto jam audienti præbe benedictionem:* 'this he did in obedience to God, and not for the fear of men; and therefore upon the account of his obedience and return, he begged his father's blessing.' But besides this, there were two remarkable examples which abundantly conclude this duty. The one was of Heliodorus, who together with S. Hierome had undertaken a monastical life by vow; but finding that by piety and nature he was to regard his only sister and her son, he returned to her house, and took upon him the habit of the clergy, and left that of monks. Against him S. Hierome, who was then a young man, newly come from the university and the schools of rhetoric, storms very much, and says some things which when he was older and wiser he changes and revokes, as appears in his epistle to Nepotian, where he imputes his former sayings to his juvenile years and learning. Now though Heliodorus had no parents when he undertook a monastical life, and therefore had his liberty, yet it is therefore certain he believed he ought not to have done it without the consent of parents if they had been living, because he did suppose a less piety, even to his sister and his nephew, to be a sufficient reason for him to leave his solitude and shew piety at home. But the other instance is more material. Stagirius was made a monk, not against his father's commandment, but against his counsel. The father was very unwilling, but durst not expressly forbid it, upon some scruples which were put into his head by the humours which were then beginning. But because he had neglected his father's counsel, and caused trouble to him, Stagirius was vexed with the devil, and S. Chrysostom[c] took great pains to comfort him. But afterwards the manners of men grew worse, and all religion was enclosed in a friar's habit, and it grew to be esteemed excellent to enter into a monastery, and whatsoever did hinder it was to be despised, or used like a temptation; and the orders of religion grew potent, and prevailed over private interests and private religion, and by degrees it entered into unsufferable mischiefs and impiety. It was sometimes restrained by good laws, so

[y] [Epist. cclxii. col. 890.]
[z] [al. epist. ccliv. col. 881.]
[a] In quæst. fus. explic., quæst. xv. [tom. ii. p. 355 D.]
[b] [Orat. ii. § 116. tom. i. p. 64 D.]
[c] Libr. de providentia. [al. lib. ad Stagirium dæmone vexatum, tom. i. p. 154 sqq.]

that it could not grow so fast. Charles the great[d] made a law concerning it: *De pueris vero sine voluntate parentum ut tonsurentur, vel puellæ velentur, modis omnibus inhibitum est,* 'boys must not be shorn nor maidens veiled without the consent of their parents.' And to the transgressors of this law a fine was imposed, the same with that which was appointed in the Salic law[e]; which did equally forbid them to be slain and to be shorn. For by religious pretences not to do kindness to their parents our blessed Saviour called hypocrisy in the pharisees; and therefore upon the like pretences to do them wrong, to take their right from them, to dispossess them of their dearest pledges, must needs be so much the worse. It is that which our blessed Saviour calls 'hypocrisy,' and 'dishonouring our parents.' It is that which the church does call an *anathema,* which the laws call *plagium,* or man-stealing. It is homicide in the account of the imperial laws: and S. Bernard calls them wolves that do it, in his first epistle, which, as the story runs, was not written without a miracle.

§ 7. The other great case is in the marriage of their children, concerning which the sentence is ready and acknowledged in the greatest part of it.

SECONDLY, it is unlawful for children to marry without and against the consent of their parents.

That such marriages are not *licitæ* is confessed on all hands; that is, the son or daughter sin against God and the laws, by marrying against his father's commandment.

> Adeone impotenti esse animo, ut præter civium
> Morem atque legem, et sui voluntatem patris,
> Tamen hanc habere studeat, cum summo probro?

said he in the comedy[f]. It is dishonourable and a shame to take a wife against the will of his father; it is against the manners and the laws of all republics. But whether they be *legitimæ* or no is a great question; that is, whether they be wholly invalid and null in law, or in case they be valid, whether or no they suffer any diminution, and what it is.

§ 8. Amongst the ancients, and for a long time in the civil law, such marriages were esteemed illegitimate, and no better than a mere concubinate. So Ovid[g] intimates in the marriage of Pyramus and Thisbe;

> ——— Tædæ quoque jure coissent,
> Sed vetuere patres. ———

[d] Lib. v. cap. 95. [lege lib. i. cap. 95, et lib. v. cap. 221, apud Baluz. capit. reg. Franc., tom. i. coll. 722, 866.]

[e] Tit. de iis qui pueros vel puellas occiderint, vel totonderint. [tit. 26. § 2, 3. apud eundem, col. 297.]

[f] Terent. [Andr., act. v. sc. 3, 8.]

[g] [Metam., lib. iv. 60.]

If the parents had not forbidden, the marriage had been legitimate; but therefore not then when they are forbidden: and therefore as incestuous marriages were not only impious but null, they are not only sinful in the entry, but all the way; so are these alike evil in all the progression, though as yet they have not a proper name in law, as the other have. But Apuleius[h] is more express; *Impares nuptiæ, et præterea in villa sine testibus et patre non consentiente factæ, legitimæ non possunt videri, ac per hoc spurius iste nascetur:* 'unequal marriages, clandestine, and made without the father's consent, can never seem legitimate, and therefore the children that are born will be illegitimate.' And Musæus[i] observes in the marriage of Leander, that it was ominous and unlucky upon this reason, because

Οὐκ ὑμέναιον ἄεισε πατὴρ καὶ πότνια μήτηρ,

'the father and the mother did not sing the hymeneal or marriage song.' The same thing was observed also by the Christians; for when Tertullian[k] is recounting the auspicious signs and causes of a blessed marriage, he puts this in, *Unde sufficiamus ad enarrandam felicitatem ejus matrimonii quod ecclesia conciliat, et confirmat oblatio, et obsignat benedictio; angeli renunciant, pater rato habet?* 'that marriage will be very prosperous which is blessed by the church, made solemn by publication and the rituals of religion, and established by the consent of the father.' For without it it is not only inauspicious and unlucky, but illegal, unfirm, and insufficient. *Nam nec in terris filii sine consensu patrum rite et jure nubent,* saith he[l]. For he lived in a time when the law pronounced such marriages illegal, and the children bastards. For as some contracts are invalid unless the solemnity of the law be observed, and testaments are ineffective without such a number of witnesses; so the law requires the consent of parents to make the espousals to be a legal and valid contract. *Non videri justum filium qui ex eo matrimonio natus est cui pater non consensit,* said Paulus[m] the lawyer: and this went so far, that if a daughter were exposed by her father like a child of the people, and no care of her education or alimony taken, yet before the time of Constantine that daughter might not marry without the leave even of that unnatural father. And amongst the children of Abraham this was so sacredly observed, that even there where by the event of things we perceive that the marriage was designed by God, yet it was not to be acted but by the father's willingness; as appears in the cases of Isaac and Rebecca[n], Samson and his wife at Timnath[o]. Thus Agar took a wife for her son Ishmael, and Jacob went into Mesopotamia for a wife by the consent of his father and mother;

[h] Lib. vi. de asino aureo. [§ 115.]
[i] [vers. 278.]
[k] Ad uxorem. [cap. viii. p. 171 D.]
[l] Ibid. l. ii. in fin. [cap. viii. p. 172 A.]
[m] ff. de statu hominum. [Digest., lib. i. tit. 5. l. 11.]
[n] [Gen. xxiv.]
[o] [Judges xiv. 2, 4.]

and Sichem asked of his father Hemor that he would get him the daughter of Jacob to wife[p]. And the words of the law were directed to the father, not to the son[q]; *Non accipies uxorem filiis tuis de filiabus eorum, et filiam tuam non dabis filio ejus:* and in the New testament[r], "He that giveth his virgin in marriage doth well:" still it is the parent that hath the right and the power; it is the parent that can make the contract; he is the person supposed only competent in law.

Νυμφευμάτων μὲν τῶν ἐμῶν πατὴρ ἐμὸς
μέριμναν ἕξει, κ' οὐκ ἐμὸν κρίνειν τάδε,

said Hermione in Euripides[s], 'My father is to take care of my espousals; that's no part of my care or determination.' And S. Ambrose[t], by the example of Rebecca, said that the choice of a husband for his daughter is to be permitted to the father.

§ 9. And indeed by these instances, and the perpetual practice and persuasion of the old world, we cannot suppose it to be less than a natural law, or a natural reason, of great effect, or of great necessity. When the daughter of Cyaxares was asked whom she would marry, she answered, Cyrus; for when they were children together he had delighted her with pretty songs and conversation: and when she was offered to him with a royal robe, jewels, and a crown of gold, and all Media for a dowry, Cyrus answered[u], *Et genus et puellam et dotalia laudo,* 'I like the lady, her dowry, and her family, but I must have these agree with the mind of my father and my mother, and then I will marry her.' For (as Panegyris in Plautus[x] told his sister) *in patris potestate esse situm liberorum matrimonium, quibus faciendum hac in parte sit quod patres imperant;* 'children's marriage is in the power of their father, and they must do what their father commands:' and Simo[y] would not allow Pamphilus to call him father, when he disobeyed him in this particular,

Quid, mi pater? Quasi tu hujus indigeas patria.
Domus, uxor, liberi inventi invito patre.

But Pamphilus in despite of his passion suffered his duty to prevail,

Tibi, pater, me dedo: quidvis oneris impone, impera.
Vis me uxorem ducere? hanc vis amittere? ut potero feram.

Pamphilus offered to quit Glycerium if his father pleased, and yet he had been contracted to her, and had a son by her. Certain it is, these contracts were to all purposes invalid by the civil law both of the Greeks and Romans. *Nuptias consistere non posse nisi consen-*

[p] [Gen. xxxiv. 4.]
[q] [Exod. xxxiv. 16; Deut. vii. 3.]
[r] [1 Cor. vii. 38.]
[s] Eurip. Andromach. [979.]
[t] Lib. de patriarch. Abraham. [lib. i. cap. 9. tom. i. col. 311.]
[u] Xenoph. [Cyrop.] lib. viii. [cap. 5. § 20.]
[x] In Stich. [vid. act. i. sc. 1. 52.]
[y] Andria, act. v. sc. 3. [19.]

tiant omnes, hoc est, qui coeunt, quorumque in potestate sunt, saith the law; *Inst. de Nuptiis, ff. de ritu nuptiarum.* And in the *Jus Græco-Romanum*[a] there is an express canon,—*Qui in aliena potestate sunt eorum pacta nihil habent firmi: propterea quæ citra voluntatem nuptiæ fiunt eorum penes quos potestas est, pro scortationibus habentur.* This is peremptory. Such marriages are fornications, and therefore the children are bastards. And of this Justinian gives this account, *Justas nuptias inter se contrahunt qui secundum præcepta legum coeunt,* 'those marriages are true which are confederated according to the precepts of laws, when the contractors are of fitting age, whether they be the chief, or the sons of families: only if they be sons of families, they must have their consent in whose power they are.' *Nam hoc fieri debere, et civilis et naturalis ratio suadet, in tantum ut jussus parentum præcedere debeat:* 'for that this ought to be done, that the father's consent must be before the marriage, not only is concluded by civil or political reasons, but also by the natural.'

§ 10. Thus it was in the natural and in the civil law; and at first, and for a long time after, it was not otherwise in the canon law. To this purpose is that famous decree of pope Evaristus[a], *Aliter legitimum non sit conjugium nisi ab iis qui super ipsam fœminam dominationem habere videntur, et a quibus custoditur, uxor petatur, et a parentibus et propinquioribus sponsetur, et legibus dotetur.* Evaristus had enumerated a great many things which were fit (as he thought), and much for the honesty and decency, the blessing and prosperity of the marriage; as, attending to solemn prayers for two or three days, oblations and bridemen, and some other things which are now out of use: he proceeds to that which was essential to the contract, the consent of parents; and *aliter legitimum non sit,* 'it cannot otherwise be legitimate:' and he adds, *aliter vero præsumpta non conjugia, sed adulteria, vel contubernia, vel stupra aut fornicationes potius quam legitima conjugia esse non dubitatur,* 'marriages without the consent of parents are adulteries and ravishments, fornications and concubinage, any thing rather than marriages.' To this accords that canon of S. Basil[b], *Puellis quæ præter patris sententiam fornicatores secutæ sunt reconciliatis parentibus videtur res remedium accipere. sed non protinus ad communionem restituentur, sed triennio punientur:* 'if fathers will pardon their daughters that without their leave run after wanton persons, their crime as to him seems to be taken off; yet let them be put for three years into the station of penitents.' Upon this canon Theodorus Balsamon[c] says, that by *puellis,* or 'girls,' S. Basil means 'those that are under their father's

[a] In respons. matrimon. Matth. monachi. [Leunclav., tom. i. lib. viii. p. 500.].

[a] Habetur caus. xxx. q. 5. [can. 1. col. 1711.].

[b] Can. 38. in can. patrum, in Græcor. nomocan. [apud Bevereg. synodic., tom. ii. p. 96.]

[c] [ibid.]

power:' and that 'if any such give themselves up to their lovers without their father's consent, and are dishonoured, although they to themselves seem to be married, yet such marriages are not valid, they cannot stand: and for this there is no remedy but being reconciled to their fathers.' But S. Basil is also as express himself in his text as Balsamon in his commentary, for in his fortieth canon[d] he says that 'marriages without the consent of them in whose power they are, are fornications and not marriages.' And therefore the council of Carthage requires that when the bridegroom and his bride are to be blessed by the priest, that is, solemnly married, they should be presented to the priest by their parents or their deputies; which thing is carefully to this day observed in the church of England. For according to the saying of S. Leo[e], *Paterno arbitrio fœminæ viris junctæ carent culpa;* 'if maidens be joined to their husbands by the consent of their parents, there is then nothing but innocence, no body hath cause to complain.' But that's not all. For Gratian expounding these words says, that from hence *datur intelligi quod paternus consensus desideratur in nuptiis, nec sine eo legitimæ nuptiæ habeantur,* 'we are given to understand that the father's consent is required, and without it the marriages are not to be accounted legitimate:' and for it he quotes the words of Evaristus before mentioned. But the council of Aquisgrane did not only separate such marriages when the maiden was stolen away without her parents' leave, but would not allow that ever after they should be man and wife, as we find in Burchard[f]; and the same was verified in the council of Melda[g], which for its warrant quotes a synodal definition of S. Gregory to the same purpose.

§ 11. The church was indeed very severe against such undutiful proceedings and rebellions against the supreme natural power; and therefore the council in Paris[h] and divers others did anathematize them that so married, and even when they were reconciled to their parents did impose on them severe penances. But because when things were once come to that pass, fathers perceived that the reputation of their children was lost, and that it was not easy to get other honest matches for their children, and especially when marriage began to be called a sacrament, and some scruples were by the clergy cast into this affair, and because men were willing to make the best of a bad market; the fathers gave over making use of this power given them by the laws, and thought the public penances were castigation sufficient. But then according to the nature of all good laws and manners running down the hill, this thing never left running till children had leave to despise their parents, and marry where

[d] [ibid., p. 98.]

[e] Et habetur caus. xxxii. q. 2[a] [can. 12. col. 1749.]

[f] In tit. de fœmin. non consecrat., cap. 33. [Decret., lib. ix. p. 178. ed. 8vo. Par. 1549.] 36. q. 2. 'Placuit.' [can. 11. col. 2047.]

[g] [can. 66. tom. iv. col. 1495.]

[h] Vide concil. Paris. [apud Gratian. decret., part. 2. caus.] 36. q. 2. 'Nullus.' [cap. 6. col. 2045.]

and when they pleased; and though it was said to be a fault, yet *factum valet, fieri non debuit*, it was decreed in the council of Trent to be valid and effectual.

§ 12. But now this sentence, which indeed relies upon some reason and very great authority, and is wise and fit to prevent much evil in families, is yet very severe, and ought to receive some allay; which when I have represented upon the general consideration, I shall endeavour to give it a right understanding, and describe the truth that lies between the two extremes, and was yet never affirmed and described by any one that I know of, but is determinable by a just weighing of all that which very many wise men have said, being put together.

§ 13. First therefore I consider what Quintilian[i] said: 'If it be lawful at any time for a son to do an action otherwise unreprovable without the consent of parents, certainly liberty is in nothing so necessary as in marriage.' . . *Ego eligam cum qua victurus sum; ego comitem laborum, solicitudinum, curarum ipse perpendam: quis enim amare alieno animo potest?* 'it is fit that I should choose her or him with whom I must always live, the partner of my joys and sorrows, the companion of my cares, the father or the mother of my own children: for it is impossible that a man should love with any affections but his own.' And if Pamphilus can love none but Glycerium, it will be hard for Simo, whose fires are extinct by age, to command his son to burn and pine away without remedy and pity. It was better which Pausanias[k] tells of Danaus, that he gave his daughters leave to choose their husbands; and Herodotus[l] tells that Callias the Athenian was much commended by the Greeks because he permitted to his daughters to choose what husbands, not he, but themselves liked best.

§ 14. But the case is to be determined by these three propositions.

I. When sons or daughters are of competent years and have the use of reason, they can naturally contract marriages; that is, there is nothing naturally required but that they can consent, and be of a marriageable strength. *Sufficiat solus consensus illorum, de quorum, quarumque conjunctionibus agitur*, said Clement[m] the third; 'consent alone makes marriage;' that is, it makes a marriage naturally valid, if it be done by those persons who naturally can consent. For that the consent of parents is not essentially necessary to the validity of the contract naturally, appears in many instances. 1) Because children can contract when their parents are dead. 2) Because if their father be dead, and their mother living, the son that is of years of

[i] Declam. [257: cf. etiam 376.]
[k] Lib. iii. in Laconic. [cap. 12. § 2.]
[l] In Erato, lib. vi. [cap. 126.]
[m] C. 'Tuæ,' de spons. extr. [lege cap. 'Cum apud,' de spons. et matrim., lib. iv. tit. i. cap. 23. col. 1324.]

discretion is not under his mother's power as to that, but that upon great and good reason he may marry by his own choice. 3) A son may marry at the command of a prince, when it is for the public good, though his father at the same time regard nothing but his private. 4) If a father say nothing to hinder it, though he be secretly unwilling, or owns the unwillingness, but behaves himself negatively as to any co-operation, yet the son may marry: which demonstrates that the father's consent is no active principle ingredient into the marriage, but a privative or a negative only; that is, he can forbid it, and so hinder it, but it is not therefore naturally invalid; that is, he can legally prevent it, but not naturally annul it. 5) If the marriage of the son be not only of regard and advantage to the son, but so far from doing injury to the father that it does him honour; the laws declare that such a marriage is valid, though the father out of humour disagree. And therefore when the law says that the son cannot contract marriage but with his father's consent, the doctors limit it amongst other cases to this especially, *quando filius duceret uxorem turpem et indignam*, when the son marries dishonourably; for then (say Bartolus and Decius[n]) there is injury done to the father: so that the prohibition lying for this reason, when the case is contrary to the reason, the extraordinary effect must be contrary to the ordinary law. 6) Whatever the law decrees in detestation of children's disobedience, yet the marriage, though to some civil effects it is nulled, yet that it is naturally valid appears in this, because the son that is born of that marriage is the grandfather's own, and if the father die before the grandfather, the grandchild must inherit. So that the punishment is but personally on the son, and is not a perfect invalidating of the marriage[o]. And this very case was determined in the parliament of Harlay in behalf of Marguerite de Nesdes her children, the nephews of her husband's father, in the year 1584. 7) If the father be unreasonable, and offers to his son or daughter an ugly, a deformed, a vicious or a base person, and gives him no other choice, and the son cannot contain and live a single life, by the consent of all men the son may refuse, and he cannot but choose another[p]. 8) The same is the case if the father be negligent; then by the law a son sooner[q] and a maiden after twenty-five years of age can choose for herself. *An sedere oportuit domi virginem tam grandem?* said Phalaris[r]. Πᾶσι γὰρ ἀνθρώποις αἴσχιστον δέδοκται, καὶ νὴ Δία ἐστὶ, παρὰ τῆς φύσεως χρόνους θυγάτηρ οἰκουροῦσα[s]· 'for it is intolerable that a maid should be suffered to pass the flower of her age

[n] Vide Ascanium Clement. Amerin. de patria potest., cap. 6. effect. 6. [§ 2. in tractt. univ. jur., tom. viii. part. 2. fol. 111. a.]

[o] L. 'Divi fratres,' ff. de jure patron. [Digest., lib. xxxvii. tit. 14. l. 17.]

[p] L. 'Filius,' 25. ff. de ritu nuptiarum. [Digest., lib. xxiii. tit. 2. l. 25.]

[q] L. 3. § 'Si emancipatus,' ff. [de bonor. possess.] contr. tab. [Digest., lib. xxxvii. tit. 4. l. 3. § 5.]

[r] [Lege 'Æschinus,'—Terent. Adelph. act. iv. sc. 5. 676.]

[s] Phalar. epist. 143. [al. 138. p. 362. ed. 4to. Groning. 1777.]

at home.' And when the *Gemara Sanhedrin*[t] had said 'Do not prostitute thy daughter, to make her a harlot,' Rabbi Eliezer said this was spoken to him that marries his daughter to an old man. R. Akiba says it was meant of him *qui domi retinet filiam nubilem*, 'that keeps his daughter at home too long.' Which two last cases relying upon the same reason produce the same effect: that the father's consent, though highly to be required, yet is not essentially necessary; it may be a valid marriage without it. 9) And this is true also in case of emancipation[u], or quitting the son from the father's power; he is *sui juris*, and can marry where he will, and yet he owes to his father all the obedience to which by the law of nature he was obliged. 10) If a son marries without his father's consent, the law says it is void; but yet it is not so void but that the father's approbation makes it valid without marrying again: which could not be if it were naturally invalid, but therefore it is both naturally and ecclesiastically good. *Quod enim ab initio male factum est, parentum postea consensus reparare videtur*, said Balsamon[x]: 'it was ill done at first, and the father's consent repairs the damage;' but if it was invalid and null at first, nothing can make it alive upon the first stock. *Quod enim ab initio non valuit, progressu temporis valere non debet*, saith the law. 11) Servants or slaves in the civil law were as much in the power of their lords as sons in the power of their fathers; as much I say, though not for so many reasons; and yet the marriage of servants was valid in law though contracted without the consent of their lords; as pope Alexander the third wrote in a decretal epistle to the archbishop of Canterbury[y]: and therefore that the marriage of sons and daughters may be so too, that is, not to be dissolved, not to be declared null in conscience, I can find no reason to the contrary. 12) We find in scripture that Esau's marriages were valid and went on, though contracted against the interest of that family, the pleasure of the parents, and, as Lyra says, without their consent. It is true indeed that the Jerusalem Targum says that they were a grief to Isaac and Rebecca because they were undutiful, and proud, and idolatrous, refusing to be taught by their husband's father or mother. But when I consider that it is not only affirmed by Rebecca that they were an affliction to her[z], but observed at the very first taking of them in, that they were a grief to both of them, and that Esau afterwards to gratify his father did marry his cousin german the daughter of his uncle Ishmael; the opinion of Lyra seems most probable, and that Isaac and Rebecca did not consent, and were not pleased with those first marriages. But if this should fail, there

[t] Cap. 9. [vid. Selden. de jur. nat. et gent., lib. v. cap. 4. tom. i. col. 513.]

[u] Ulpian. l. 3. § 'Si emancipatus,' ff. de bonor. possess. contr. tabulas. [ubi supra.]—Hoc observant Græci ad l. 10. de sponsal. lib. xxviii. βασιλικ. tit. i. [Scholia in leg. suprad.—Basilica, tom. iv. p. 220. ed. Fabrot. Par. 1647.]

[x] In can. Basil. 38. [apud Bevereg. synodic., tom. ii. p. 96.]

[y] C. 1. extra. de conjug. servor. [lege Adrian. ad epise. Sancteburg. vel Salisburg., lib. iv. tit. 9. cap. 1. col. 1370.]

[z] [Gen. xxvi. 35.]

are arguments enough besides to evince that naturally such marriages are valid, though at no hand they ought to be done.

§ 15. But what then shall we say to all the former discourse, which proved that those marriages were illegitimate, and the conjunctions no better than concubinate? Does all that heap of things, and sayings of wise men, and laws ecclesiastical and civil and natural, effect nothing? or do they prevail entirely? That they effect something their own strength does evidence; that they do not prevail to effect a natural nullity in marriage, the contrary arguments described in the former number do sufficiently prove. What then is the conclusion?

§ 16. From hence we may learn it.

II. Although the marriage is naturally valid, yet that natural validity can have this effect only, that it can for ever bind the conscience of the engaged parties to faith and mutual love, and to cohabitation when it is not hindered; and it is, even when it is most of all forbidden, yet potentially legitimate, that is, it wants no features and lineaments, nor life, but it wants solemnity and publication; that is, it is like an embryo in his mother's womb, there it must stay, till the law gives it name and birth. For it is to be considered, that although the young folks can contract even against their parents' will, yet they can be hindered from possession: not only because natural rights can be impeded in their use and challenge by the supreme civil power, but because there is in marriage something that is wholly in the power of the civil law. For in marriage there are three things, unity, and society, and mystery. This last is not of present consideration, because it is wholly of spiritual nature, and therefore of ecclesiastical cognizance. But of the other two, the first is in the power of the contractors, the latter is in the power of the commonwealth. From union of minds, and obligation of mutual duties and affections, and perpetuity of relations, they cannot be kept by their dissenting parents, or by the civil law. But from being a society, from beginning a legal family, from rights of succession, from reckoning descents in their line, and from cohabitation, they can be kept by that power which is the supreme in the establishment and conduct of all societies. And the consequent of this will be, not only that such persons shall lose all civil benefits and profits of inheritance, that is, all that can come from society, but even their very unity can be disparaged, so as it shall be esteemed no better than fornication; not that it is so before God, or is against the virtue of chastity, but that it is so in the civil account, and is against the laws of marriage. It is in this as it is in the case of *raptus* or 'ravishment.' In the civil law, he that takes away a man's daughter without the consent of her parents *rapuisse dicitur*, is a ravisher: but it is not so in the canon law, it is not so in nature or conscience. *Raptus ibi dicitur admitti ubi nihil ante de*

nuptiis dicitur: 'if there was no treaty of marriage, it is a rape;' but if the man was secretly betrothed, to carry her away and lie with her is no rape, *licet parentes reclamarent,* 'although the parents were against it,' said pope Lucius the third[a]. Now to call this a rape, and to punish it as if it were, is in the power of law: just as the stealing of a knife out of a church, or a chalice out of the clerk's house, may by law be called sacrilege: and then it is so to all the purposes of law; though before God it may not differ from simple theft. So for young lovers to lie together before publication is by the canon law called *antenuptialis fornicatio,* and is punished as if it were so indeed: and yet though it be evil in the eye of men, and upon that account is so itself, yet in the eyes of God it is not fornication; God himself having expressly called a 'betrothed woman' by the name of 'wife[b],' and punished her falsehood to her husband before marriage with the same evil as adultery. And thus it is in the present enquiry: marriage of persons in minority is naturally invalid, because they are naturally unable to make a contract for their good, they understand it not; but if they be of good years, though under their father's power, they are naturally able, but politically unable, and therefore are inevitably engaged in an evil condition, and they have sinned, and it is a miracle if they do not sin again, and abide in it upon this account. For the marriage is good within doors, but it is not good abroad: they are both obliged, and yet cannot pay their obligation: this marriage is not good in law, and yet they cannot choose another in conscience: it was by their own fault, and therefore they must bear their own burden: they are guilty of fornication, but it is not a sin against the seventh commandment: they have not dishonoured their own bodies between themselves, but they have dishonoured them before all the world besides. And as 'covetousness is idolatry,' and 'rebellion is witchcraft,' so this disobedience is unchastity, it is uncleanness against the fifth commandment: and therefore it is no legal marriage, but unlawful at first, and remains so all the way, till a legal remedy be found out. For this thing is rightly stated by Paulus the lawyer[c]: *Matrimonia hæc jure non contrahi, sed tamen contracta non solvi,* 'such marriages ought not to be made, but being made they cannot be dissolved.' And he gives an excellent reason for it; *contemplationem enim publicæ utilitatis privatorum commodis anteferri.* It is of public concern that marriages naturally valid be not rescinded; but it is but of private emolument that the father should be pleased in his daughter-in-law: and therefore although the law of God and man do their several shares for the securing of every interest and concern[d], yet that regard which is greatest and more public is to be preferred. Now for the under-

[a] C. 'Cum causa,' de rapt. extra. [Greg. IX. decret., lib. v. tit. 17. cap. 6. col. 1584.]

[b] [Deut. xxii. 23, 4.]

[c] Lib. sentent. ii. tit. 19. [§ 2. in corp. jur. civil. Gothofredi.] Idem dixit vetus scholiastes ad Paulum.

[d] [Exod. xxii. 16, 7.]

standing of the full effect of this, and for the verification of it, it is to be considered, that laws are called perfect or imperfect. A perfect law is that which either in itself or by the magistrate rescinds whatsoever was done against her prescript, *l.* '*Non dubium,*' *C. de legib.*[e] The imperfect law is that which does not indeed rescind the thing, but inflicts a punishment upon the transgressors: such as was the *lex Furia testamentaria,* and such as is the law concerning these forbidden marriages against their father's will; the marriage must stand, and the married must lie under the punishment[f]: they in the civil law were reckoned as concubines, and their children bastards, and there was neither dowry nor marriage allowed. And upon this account all those sayings which I brought in the former numbers[g] are true: the marriages were then civilly null, that is, in estimation of law and to all intents and purposes of law were outlawed, and made incapable of civil benefits and advantages; but the law could not make them naturally null: and in the law of Moses[h], although a maiden that had been humbled was to become the wife of him that did it, and to have her dowry accordingly, if her father pleased, and he might choose whether he would or no; yet there is no footstep or sign, that if he had betrothed himself to her, and lain with her, that then she was not his wife, or that her dissenting father could make it null. Indeed divorces were so easily granted them, that even in this case they had a remedy at hand: but we are tied up by stricter and more holy bands; and since Christ reduced it to the first institution, and that it was made to represent the union of the church unto Him, it is not so easy to untie this knot. So much as in the power of law, so much is fit to be done for the securing the father's authority and his rights according to the interests of religion and the public: but the laws themselves have a limit; and though they can verify all their own acts, yet they cannot annul the act of God: *Quæ Deus conjunxit, nemo separet*[i]. Conjunction of marriages is by a law of God and nature, and to it nothing is required but a natural capacity and an explicit consent, and therefore this no man can separate. But yet,

§ 17. III. The father hath over his children a double power; a natural power and a political. His natural power is entire, absolute, and unlimited, except where the law of God or of nations does intervene; but then it lasts but till the children are able to understand and choose, and shift for themselves. For there are some natural and personal rights relating to duty, to the perpetuating the kind, to defending and providing for themselves, which are not to be taken from us, unless they be as well or better supplied other-

[e] [Cod. Justin., lib. i. tit. 14. l. 5.]

[f] O sententiam necessitate confusam! parcit et sævit, dissimulat et animadvertit.—Tertull.

[g] § 8—11. [pp. 478, 81.]

[h] [Exod. xxii. 16, 7.]

[i] [Matt. xix. 6; Mark x. 9.]

where; for some can, and some cannot. The desires relating to marriage have in them so much natural necessity, and so much relation to personal duties, that either they must be in our own powers, or else our salvation must depend on other men. *Nescis nostri arbitrii esse matrimonia? Affectus nostri nobis non serviunt: non potes efficere imperio ut vel amem quam velis, vel oderim; matrimonium vero tum perpetuum est, si mutua voluntate jungitur. Cum ergo quæratur mihi uxor, socia thori, vitæ consors, in omne sæculum mihi eligenda est*[k]: 'my wife is to dwell with me for ever, the half of myself, my lasting joy or my lasting sorrow, and if I do not love her we cannot live comfortably, and to love I cannot be commanded, for my affections are not at my own command, much less at another's: and therefore the conduct of this belongs to myself, and to none else, for so much of the interest as the union and conjunction comes to; and in this I am no man's subject, when I am a man myself.'

§ 18. But the father hath a political power. *Patria potestas est jus quoddam quod habent qui sunt de imperio Romano in liberos naturales et legitimos*[l], say the lawyers: 'the paternal power is defined by the measures of the Roman law;' and so it is in all countries by their own measures. Now in most countries, especially of old, the father had so much power given to him over his children that they were a part of his possessions; they acquired what they did acquire for their father, not for themselves; they might be pawned, they might be sold three times for their father's profit; they must last and abide under this power till they were dismissed or emancipated by their father. Now whatsoever rights were consequent to these powers were so wholly to be disposed of by the fathers, that whatsoever actions of the sons did destroy those rights, were so far, and in relation to those rights, null and invalid. When therefore the father had by the civil law a power over the person of his son, so as to have the profit of his labours, the issues of his marriage, his children to succeed, the son's wife to be partner of his goods and his holy rites, and to perpetuate his family, he had by the civil law power to dispose of him so far as concerned these things, but no further. And therefore the father had power to disinherit the son that married without his father's leave; and all the emperors and all the lawyers till the time of Constantine did allow it: but then it felt variety and change, and it was limited to the case of the son's marrying dishonourably.

§ 19. The result of these three propositions is this, that every commonwealth hath power to extend or to straiten the father's political power, and to give sentences and judgments upon the actions that relate to such power: and if the law does declare the children of marriages against the parent's will to be bastards, they are so;

[k] Quintilian. declam. [376.]

[l] § 'Jus autem potestatis,' Inst. de potest. patr. [lib. i. tit. 9.] et l. 'Nam civium,' et l. 'Item in potestate,' ff. de his qui sunt sui et alieni juris. [Digest., lib. i. tit. 6. ll. 3, 4.]

and the son not to succeed in his father's estate, it must be so; and the marriage to be a concubinate, it must be accounted so; and the conjunction to be uncleanness, it must be called dishonourable, and may be punished as if it were so: and this must last so long till the son be by the same law declared not to be under his father's power as to that particular; and when it is so, he can then choose for himself without fraud or detriment: though even then also he hath upon him two bands, reverence and piety, from which the son can never be emancipated as long as he lives, and as long as he can be obliged to be a thankful person; ever remembering what the old sibyl[m] said, that they deserve damnation,

——— quive parentes
In senio linquunt, neque præmia digna rependunt
Pro nutricatu, vel qui parere recusant,
Aspera vel contra dixerunt verba parentes,

who leave their parents in their old age, who speak words against them, who do not pay their thankful duty for their alimony and education, and who refuse to obey them, viz. according to the laws, and according to the exigence of reverence and piety which must be for ever.

OF EXEMPTION FROM THE POWER OF FATHERS.

§ 20. For by this means we shall the shortest and truest answer the enquiry, when a son is free from his father's power, and how long he is τῆς πατρονομίας ἀνάγκαις ὑποκείμενος, as Demosthenes[n] his expression is, 'subject to the necessity of the father's laws.' I answer that,

1) In those things which are parts of natural power and relate to personal duties, the father hath always a power of counsel, which must be regarded by the ties and analogies of reverence and piety, and the reasons of the things themselves. But in those powers which the law hath given him, he is to abide in them as long as the law permits; for in this there is no other measure but the law. But in these and all other things whatsoever, when by nature and the laws we are quit from the empire of the father, and that power which is called castigation, or the power of command and coercion, we are still tied to fear him with a reverential fear, and to obey him with the readiness of piety in all things where reverence and piety are to have regard and prevail, that is, wherever it is possible and reasonable to obey. *Quæ prærogativa ex beneficentia acquiritur perpetuo durat,* said Aristotle, 'the authority that is acquired by bounty is perpetual.'

§ 21. And therefore even marriage itself does not quit the children from their duty: not only by force of civil laws, in which sense the

[m] [lib. ii. in Max. bibl. vet. patr., tom. ii., part. i. p. 502 G.]

[n] [Apud Lucian.] in encomio. [dial. lxxiii. § 12.]

son's wife was in the father's power as well as the son himself till he was emancipated; but I mean it in respect of reverence and pious regards, and natural duty, and humble observation. For *nomen patris grande mysterium est, et nomen matris arcana reverentia*, said Origen[o]; 'there is reverence, and there is mystery, and all sacredness in the names of father and mother:' and that dignity lasts for ever. The ancients tell that when Danaus, who had given liberty to his fifty daughters to marry according to their own liking, was compelled to give them to the fifty grandchildren of Ægisthus, he gave to each of them a sword, and commanded them to kill their husbands the first night before their congress: and they thought themselves, though married, obliged to obey their father, and all did so but Hypermnestra, who for her disobedience was questioned upon her life, and was by the equally-divided sentences of the judges acquitted. The like story to this is told by Chalcondylas[p], that a daughter of a Florentine physician being by the public request and necessity of the town given to Lantislaus an amorous prince, who to get her besieged the town, her father gave her a poisoned handkerchief which he commanded her to use upon the prince; and she did so, and upon herself, and both died. These indeed were excesses of power and obedience: but I noted them to shew that the sense of the world is to suppose children obliged to their parents even when they are in the power of a husband, or in necessitude and conjunction with a wife. And this is extended also to daughters that are widows, if they be in minority, that is, under twenty-five years; for so it was in the Roman law; or, if under any other number of years which the law calls minority in any government. Ἡ ἐλάττων τῶν εἴκοσι πέντε ἐτῶν αὐτεξουσία, μέλλουσα δευτερογαμεῖν, γνώμῃ τοῦ πατρὸς γαμείσθω[q], 'if she will marry again, let her marry by the consent of her father.'

§ 22. 2) If a son be a magistrate, the magistrate is exempted, but not the son. That is, in those things which concern his office and dignity the father hath nothing to do with him: but in things economical the father's power stands, and his person is capable of the same regards as formerly; of all the same, *salvo honore magistratus*. But yet the reverence of such a son to a father ought to be no otherwise exacted than by the measures of prudence and custom, and the common usages of the place. When Fabius Maximus came to his son who was then consul, and sat upon his horse otherwise than he ought, his son sent the lictors to him to call him to descend and come to him: and the old man gladly obeyed, and told him, *Non ego imperium tuum, mi fili, contempsi*[r], 'I did not despise thy authority, but I tried if you knew how to be a consul: *nec ignoro quid patriæ*

[o] Homil. xi. in Levit. [tom. ii. p. 249 B.]

[p] [Hist. Turc., lib. v. p. 142. fol. Par. 1650.]

[q] In Basilico. [Matth. mon. in respons. matrim., apud Leunclav. Jus Græco-Rom., tom. i. lib. viii. p. 495.]

[r] Valer. Max., lib. ii. c. 2. [§ 4.]

venerationi debeatur, verum publica instituta privata pietate potiora judico, 'I know what veneration is due to a father, but the private regard must give place to the public laws.' And yet even in things of public nature, if a father be wise, his counsel ought to have some force besides the reason. When the tribunes of the people, who sometime had consular dignity, contended which of them should go to the war against the Lavicani[s] (for they all would fain have gone, but none would stay at home to take care of the city,) Quintus Servilius commanded his son to stay, and do his duty at home; and he did so, for it was for the public interest that one should, and the power of his father determined him when they all refused at first.

§ 23. 3) If a son enters into holy orders, it does not quit him from his duty and obedience to his father, unless the law declare it so; that is, in such things wherein the father's political power did consist. And we find in that collection of canons which is called apostolical[t], it is decreed that if a servant take on him holy orders against the will of his lord, there was a redhibition allowed; he was to return to his service till he was freed by his lord. The case is the same in princes and in fathers.

There are four little queries more for the finishing this rule; the answers to which will be short, because they depend upon the former discourses.

§ 24. 1) Whether if the grandfather be alive, and the son be in his power, it be sufficient to legitimate the marriage of the nephew if the grandfather consent, though the father be not asked.

§ 25. To this the lawyers answer with a distinction[u]: if the nephew marry a wife, the consent of the son must be asked; but if the niece marry, the consent of the grandfather is sufficient: and so it is if the nephew marry in the same family, that is, the niece by another son. The reason of the last is, because the fathers are supposed willing to do advantage to their own family, and therefore it may be sufficient that he who is in actual possession of the government should explicitly consent, and the other implicitly. But why to the marriage of the niece the grandfather's consent should be enough, but to the nephew's marriage the father's consent also be required, the reason that is pretended is only this, because no man ought to have his heir provided for him against his will, of which there is no danger in the marriage of a daughter. But in short, though this was thus in the civil law of the Romans, and was no more reasonable than we see; yet now that it is a case of conscience I am to answer otherwise. For it is against natural and divine reason and laws that the fathers should in either of the cases be neglected, who ought rather to be

[s] [Liv, lib. iv. cap. 45.]

[t] Cap. lxxxii. [al. lxxxiii. Coteler. patr. apost., tom. i. p. 452.]

[u] l. 'Oratione,' 16. § 1. ff. de ritu nuptiar. [Digest. lib. xxiii. tit. 2.] et l. 3. D. eod. [ibid.]

preferred, as he that is most and longest like to be concerned in the good and evil of the marriage.

§ 26. 2) Whether if the parents have consented and authorized the treaty of marriage till the affections of the children are irrevocably engaged, and afterwards retract that consent, the children are bound to obey their parents, and quit their loves.

§ 27. This I find in an elegant case related by Gentian Hervet in his oration to the council[x]. Damoiselle Vitrou was espoused to a cavalier by her parents; but when he would have married her and carried her home to his friends, her parents, I know not upon what account, changed their minds and refused to let her go. But the soldier carries her away by force and marries her and lies with her, but used her ill; of which she being quickly weary, flies into a monastery; and that she might not be drawn thence and forced to return under her bondage, she pretends that he was not her husband by law, because he forced her from her father's house against the will of her parents. To this it was answered in behalf of the husband, that she who was espoused legally, might be carried away by the spouse lawfully, according to that of Gregory and Eusebius[y], *Si quis virginem aut viduam furatus fuerit, nisi fuerit a se desponsata, anathema sit.* If she was not espoused, it is *plagium et raptus*[z], 'a rape and stealth;' but if she was, it was no fraud to him. Now if this was no ravishment, as it is plain, because she was espoused, and she was willing, though her parents were not, then she was his wife, says the law; and if so, then the revocation or dissent of the father hindered not but that she might proceed thither where she was engaged. Now this case went far indeed: but if it be not gone so far, yet if it be gone thither from whence they cannot honestly or decently recede, the father's dissent ought not to be a prejudice to the consummation: for it began from an honest and a competent cause, it was a fire kindled from the sun, and it proceeds to that which is honest in itself; and therefore there is no evil done. But if the parties are unengaged, or be indifferent, or can well retire, the first liberty did not let them loose from duty; but that they are to abide there where they were, unless (I say) by that first leave they are passed beyond a fair return. For the affections and the great content of children is not to be played with, as with a tennis-ball; and it is in this as in his children, if he have begotten the affection unto life, he must maintain it at his own charge.

§ 28. 3) Whether mothers have the same authority over their children as the fathers have.

[x] De clandest. matrim. impress. Paris. 1556. [fol. 10 b. 4to. Ven. 1563.—The case is there given without proper name.]

[y] In Burchard. [decret., lib. ix. capp. 11, 13. fol. 176.] et in decretis. [Gratian. part. 2. caus. xxxvi. quæst. 2. can. 5. col. 2045.]

[z] Idem dixit Lucius III. in C. 'Cum causam,' de rapt. extra. [ubi supra.]

To this I answer, that in the civil law sons were not in their mother's power, but in their father's: *Appellare de nuptiis debui patrem*[a]; and Eustathius upon Homer[b], Χρήσιμον δὲ εἰς θέλημα πατρικὸν ἐπὶ γάμῳ τε, ὡς αὐτὸς ἐεδνώσαιτο θυγατέρα· 'he that gives the dowry, it is fit that by his will the marriage be contracted.' This is well enough, that the father should do it: but it becomes the piety of children to endeavour that their mother be pleased; for to her also there is the same natural relation, obligation and minority, and in all things they are equal, abating the privilege of the sex; and therefore though the same duty is owing to them both, yet their authority is severally expressed, which to my sense is well intimated by Eustathius[c]: οὐκ ἐξουσία πατρὸς, οὐ μητρὸς πειθὼ, οὐδ' εἰ τὴν Ἀφροδίτην ἀγάγωνται, 'not the power of my father, nor the persuasion of my mother, should make me marry even Venus herself.' Where the mother is allowed only the power of persuasion. But that also implies all her power, only that is the most proper way for her exercise of it. And it is the most forcible. *Jussum erat, quodque est potentissimum imperandi genus, rogabat, qui jubere poterat,* said Ausonius[d]. Οἷς γὰρ ἂν ἐξῇ πράττειν ὅ τι ἂν ἐθέλωσι σὺν βίᾳ, ἥπου δεόμενοι δυσωπεῖν καὶ πείθειν ἀρκοῦσιν, said Julian the emperor[e]: 'for they that can if they please compel, ought most of all to prevail when they counsel and entreat.' But however things were in the law of the Romans, yet by the laws of nature mothers, who have so great an affection to their children, and so great an interest in the good and evil respectively of their son-in-law's or their daughter's manners, must with duty and tenderness be regarded like the fathers. Ὁ δὲ τὸν τῆς φύσεως νόμον ἐποιεῖτο παραχρῆμα τοῦ πρέποντος βραβευτὴν, καὶ τὸν ἀνεθέλητον τῇ μητρὶ γάμον παραιτεῖσθαι προστέταχε τῷ υἱῷ, said S. Cyril of Alexandria[f]: 'consonantly to the law of nature he commanded his son to abstain from such marriages as were displeasing to his mother.' Isaac did so to Jacob. And to this purpose Catullus[g] elegantly presses this obligation.

> At tu ne pugna cum tali conjuge, virgo.
> Non æquum est pugnare, pater cui tradidit ipse,
> Ipse pater cum matre, quibus parere necesse est.
> Virginitas non tota tua est: ex parte parentum est.
> Tertia pars matri data, pars data tertia patri,
> Tertia sola tua est.——

Her father and her mother and herself had in herself equal share.

§ 29. But if the father be dead, then the question is greater, because if the mother have any power, she hath it alone: when her husband lived she had power as the moon hath light by the aspect of the sun; but now that her light is extinguished, hath she any

[a] Seneca excerpt. controv., lib. iii. cap. 5. [tom. iii. p. 434.]
[b] Ὀδυσσ. β. [p. 79. ed. fol. Bas. 1559.]
[c] Ismeniæ et Ismen., lib. v. [p. 220. 8vo. Lips. 1792.]
[d] Epist. ad Paulum. [pros. 350.]
[e] Orat. ii. [lege iii. tom. i. p. 121 C. fol. Lips. 1696.]
[f] In Genes. iv. [tom. i. p. 111 A.]
[g] [carm. lxii. 59.]

natural and proper power of her own? To this S. Austin[h] answers clearly, *Fortassis enim quæ nunc non apparet, apparebit et mater, cujus voluntatem in tradenda filia omnibus ut arbitror natura præponit: nisi eadem puella in ea jam ætate fuerit, ut jure licentiore sibi eligat ipsa quod velit.* From which words of S. Austin it is plain, that in the disposing of her daughter in marriage by the voice of nature the mother hath a power; and this is rather, and more, and longer than in the disposal of her son. The reason of both is the same, because by the advantage of the sex and breeding, the son will be fit to govern in the family: and at the same time the daughter hath the weaknesses of feminine spirit upon her as much as the mother, and more by reason of her tender age and want of experience. To which may be added, that if the father be dead, the estate is descended upon the son, and then he is put by law under the power of tutors and guardians, and then is to marry, εἰ ἐτελεύτησεν ὁ πατὴρ, γνώμῃ τῶν συγγενῶν, says the law, 'by the consent of his kindred' and guardians; that is, if he be not come to maturity: but if he be, the rule is, *Filius quidem pubes nullius expectat arbitrium, filia vero matris et propinquorum*[i], 'a son that is of a marriageable age if his father be dead is wholly in his own power, but a daughter is under the power of her mother.' And yet this also lasts no longer but to a certain age, which is determined by the laws of every nation respectively. And yet both the son and the daughter are to shew piety to their mother, and not to grieve her. *Pulchre Deo obtemperat qui tristis est parenti,* for 'he does ill serve God that brings sorrow to his parent.' And therefore the ancient laws of the Romans were ever favourable to that part of the marriage which the mother chose. *Postulatu audito matris tutorumque, magistratus secundum parentis arbitrium dant jus nuptiarum,* says Livy[j]. But the Wisigoths[k] by their law were more kind to the mother's interest, for *patre mortuo utriusque sexus filiorum conjunctio in matris potestate consistat;* 'both son and daughter if their father was dead were in the power of their mother, and were to marry by her appointment and counsel.' And therefore Simeon Metaphrastes[l] commends Abraham for taking a wife at the command of his parents, μίαν τῶν ἐντολῶν καὶ τοῦτο εἰδὼς, τὸ πατρὶ καὶ μητρὶ πείθεσθαι, 'as knowing it to be one of the divine commandments to obey his father and his mother.' But these things were varied by laws and particular considerations. That which is of universal truth is this only, that in their natural minority children are equally under the power of their mother, as of

[h] Epist. ccxxxiii. [al. ccliv. tom. ii. col. 881 E.]

[i] l. 'Filia,' 20 C. de inoffic. testam. [Cod. Justin., lib. iii. tit. 28.] et Βασιλικ. lib. xxviii. c. 4. [tom. iv. p. 249.]—Constantin. Harmenopul. epitom. l. iv. tit. 7. § 12. [vid. sect. v. tit. 3. § 42. apud Leunclav. jus. Græco-Rom., tom. i. p. 54.]

[j] Liv., lib. iv. [cap. 9.]

[k] Lib. iii. tit. i. § 7. [p. 62. ad calc. Cassiod., p. 62. ed. fol. Par. 1579.]

[l] In Abramio. [Latine apud Surium vitt. sanctt., in Mart. xvi. Actt. sanctt. Bolland. ibid., tom. ii. p. 436.]

their father when he was alive; but when they can choose, they are sooner quit from the castigation or legal coercitive powers of their mother, than of their father if he had lived. And this relies upon the practice and consent of all the world, and hath this reason, because women are not by laws supposed very fit to govern lasting interests. But lastly, they are never quit from their reverence and duty, piety and greatest and kindest regards: but the mother's dissenting does not annul the marriage of her sons that are of age; and it is so far from that, that their not complying with their mother in this affair is only then a sin when it is done with unregarding circumstances, or hath not in it a great weight of reason. But every child should do well to remember their obligation to their mothers; and as S. Chrysostom[m] said in his own case, when he had a mind to enter into a monastery his mother recalled him, or rather the voice of God crying, *Fili colito Anthusam,* 'Son, remember thy mother Anthusa,' and grieve her not as long as she lives. For *nomen matris, arcana reverentia*[n], 'there is a secret veneration due to the very name of a mother.'

§ 30. 4) Although a father's authority is such that against it a son may not marry; yet whether or no is the power of the parents such that they can compel a son or a daughter to marry whom or when they will?

§ 31. To this I answer, that in the matters of marriage especially, and proportionably to the probable event of things in other lasting states of life, that of Aristotle[o] is very true, Ἡ μὲν οὖν πατρικὴ πρόσταξις οὐκ ἔχει τὸ ἰσχυρὸν οὐδὲ τὸ ἀναγκαῖον, 'the father's authority hath in it no necessity, no constraint.' Which Heliodorus Prusæensis[p] thus paraphrases, the commandments of fathers to their children τὴν ἰσχὺν οὐκ οὕτω μεγάλην ἔχειν ὥστε βιάζεσθαι, 'have not in them such force that they can compel their children.' And therefore Pamphilus in the comedy[q] complains passionately, and yet reasonably,

> Proh Deum atque hominum fidem! quid est, si non hæc contumelia 'st?
> Uxorem decrerat sese dare mihi hodie: nonne oportuit
> Præscissę me ante? nonne prius communicatum oportuit?

Upon which place Donatus said well, *quia nuptiarum non omnis potestas in patre est,* 'all the entire power of marriages is not in the fathers.' It may not be done against their wills, but neither is their will alone sufficient. The fathers have a negative, but the children must also like. *Constat enim circa nuptias esse filiis liberam voluntatem: ideo servata ratione pietatis communicatum oportuit,* said Eugraphius, 'for it is certain they have the power of choice, and there-

[m] Lib. i. de sacerdot. [tom. i. p. 363.]
[n] Origen. [ubi supra.]
[o] [Ethic. Nic., lib. x. cap. 10. tom. ii. p. 1180.]
[p] [Al. Andronicus Rhodius in loc. p. 716. 8vo. Lugd. Bat. 1617.]
[q] Andria, act. i. scen. 6. [lin. 2.]

fore in piety the father ought to have acquainted the son with it.' And the same also is the case of the daughter, she is not to be forced to marry against her inclination and affections. Eustathius upon that of Homer[r], ὣ πατὴρ κέλεται, καὶ ἀνδάνει αὐτῇ, says, πρὸς ἀκρίβειαν ἐρρέθη πολιτικὴν, 'it was spoken according to the exactest political measures,' that the father should choose a husband for his daughter Penelope, and yet that his daughter should like the young prince Ulysses; οὐ γὰρ δουλικῶς ὁ πατὴρ τῇ θυγατρὶ τὰ τοιαῦτα κελεύσει, ἀλλ' αἱρήσεται καὶ αὐτή. For there is difference between a servant and a child; the father may choose for his daughter, so that at the same time she may choose for herself: and therefore (says he) when Homer said δοίη δ' ᾧ κ' ἐθέλῃ, he says it in respect of the father, that he may give her to whom he please; but when he says καὶ δς ἂν τῇ Πηνελόπῃ χαριεὶς δόξαι, he says it in respect of the daughter, that the man whom the father chooses must be gracious in her eyes: οὐ γὰρ θέμις παρὰ Ῥωμαίοις ἄκουσαν γυναῖκα κατεγγυᾶσθαι ἀνδρὶ, said Priscus[s], 'it is impious to marry a daughter against her will.'

§ 32. But this is to be understood with some restraint. For if a father may choose, and the daughter may choose too, how if it happens that they fancy several persons? shall the father's authority or the daughter's liking prevail? both cannot prevail at once: but the question is, which shall, and when, and how long, or in what cases. To this I answer that if the matter be indifferent, or the person be fit, the father ought to prevail. *Patris quippe jussa non potuisse filium detrectare*[t], 'a son may not refuse his father's commandment.' For the father's authority is certainly a very great thing; ἄρχων ὁ πατήρ ἐστι τῷ παιδὶ, καὶ δεσπότης ἐξ αὐτῆς τῆς φύσεως[u], 'a father is by nature to his child both a lord and a prince:' and therefore Theophilus[x] calls the paternal power ἄκραν ἐξουσίαν, which is the title of the royal majesty: and though the old name for disobedience in the scripture is 'witchcraft,' yet Ennodius[y] would fain have found a new name for this kind of it. *Non invenio qua novum facinoris genus explicem novitate sermonum, quibus fuit sacrilegium non parere:* it is 'sacrilege' at least not to obey our parents. Now although this be spoken generally and indefinitely, yet it must have its effect in such commandments which have no great reason against them: and therefore if a father offers a wife to a son, or a husband to a daughter, such as a wise or a good man may offer without folly and injury, the child is not to dispute at all, but to obey, if the father urges and insists upon the precept.

§ 33. But there are some cases in which the father ought not to urge the children. 1) If the children be not capable or able for mar-

[r] Ad Ὀδυσσ. β. [p. 79. fol. Bas. 1559.]
[s] In eclogis legationum. [Corp. hist. Byzant., tom. i. p. 48 C.]
[t] Tacit. annal., lib. iii. [cap. 17.]
[u] Manuel Palæolog. orat. vii. [p. 416. 8vo. Bas. 1578.]
[x] Ad § 1. de his qui sui vel alien. jur. [Inst., lib. i. tit. 8. in glossa.]
[y] Declam. 10. [p. 490. 8vo. Tornac. 1611.]

riage, if it be destructive of their health, or against his nature; and this excuse was allowed amongst the Romans even where the paternal power was at the highest. *Solent qui coguntur a patribus ut uxores ducant, illa dicere, Non sumus etiam nunc apti nuptiis*[z]. It is not fit to require them to marry that hate, or are unable to do the offices of that state. 2) If the father offer to his child a dishonest or filthy person, unequal, or unfit; that is, when it is notoriously or scandalously so: when the person is intolerably and irreconcilably displeasing, then the command is tyranny. The son is bound to obey his father commanding him to marry; *Sed enim si imperet uxorem ducere infamem, propudiosam, criminosam, non scilicet parendum*, said A. Gellius[a]; 'but not if he offers to his child an infamous, a dishonest person.' And so the law provides in behalf of the daughter, that she ought not to be compelled to marry an infamous man; *l.* '*Sed quæ patris,*' *ff. de sponsal.*[b], and so Harmenopulus[c] renders it, τότε δὲ μόνον ἀντιλέγειν δύναται (ὑπεξουσία[d]) ὅτε τοῖς τρόποις ἀνάξιον καὶ αἰσχρὸν αὐτῇ μνηστεύεται, 'she that is under her father's power can then only refuse her father's command, when he chooses for her a man that is unworthy in his manners, and a filthy person:' and indeed in this case she hath leave to refuse the most imperious command of an angry father. Son and daughter in this have equal right: οὐδὲ νῦν γεγάμηκεν, ἀλλὰ καταναγκαζόμενος καὶ βιαζόμενος ἠρνήσατο: so Lucian[e]: 'though his father would have compelled and forced him to marry a wife, yet he refused it:' and he might lawfully, when he offered him a strumpet.

§ 34. But there is another sort of persons which are called *turpes*, 'filthy' or 'hateful;' and that is, such as are deformed and intolerably ugly. Μόνους γοῦν τοὺς μὴ καλοὺς ὀνομάζομεν αἰσχροὺς, saith Lucian[f], 'we call them filthy that are not fair or comely.' But in this sense, if the father offers a husband to his daughter, she hath not liberty to dissent, but only to petition for liberty: for beauty is not the praise of a man, and he may be a worthy person, though of an ill shape, and his wit and manners may be better than his countenance. And there is no exception in this, but that if the daughter hath used all means she can to endure him, and cannot obtain it, she can only then refuse when she can be sure that with him she can never do her duty; of which because she cannot be sure beforehand, because his worthiness may overcome the air and follies of her fancy, therefore the unhandsomeness of a man is not alone a sufficient cause for a

[z] Senec. controv. i. 6. [tom. iii. p. 124.]

[a] Lib. ii. c. 7. [§ 20.]

[b] [Digest. lib. xxiii. tit. i. l. 12.]

[c] [Prompt. jur., lib. iv. tit. 1. § 6. p. 281. 4to. Genev. 1587.]

[d] Matthæus Monachus legit ὑπεξούσιοι, ut filium etiam comprehendat: sed male, quia eo loci JC. separatim loquitur de filio et filia, et de filio controversia non erat. [Respons. matrim. apud Leunclav. jus. Græco-Rom., lib. viii. tom. i. p. 501.] Harmenopulo a. consentiunt βασιλικὰ, lib. xxviii. tit. 1. [§ 10. tom. iv. p. 215.]

[e] In dial. meretr. [vii. cap. 4. tom. viii. p. 222.]

[f] In Charidemo. [cap. 26. tom. ix. p. 274.]

daughter to refuse her father's earnest commands. But yet in this case though a father have authority, yet a good father will never use it, when it is very much against his daughter, unless it be also very much more for her good. But a son hath in this some more liberty, because he is to be the head of a family, and he is more easily tempted, and can sooner be drawn aside to wander, and beauty or comeliness is the proper praise of a woman; comeliness and good humour, *forma uxoria*, and 'a meek and quiet spirit' are her best dressings, and all that she can be good for in herself; and therefore the ugliness of a woman will sooner pass into an incapacity of person, than it can do in a man. But in these cases, as children should not be too forward to dispute the limits of their father's power, lest they mistake their own leave or their father's authority; so fathers also should remember what the lawyers say[g], *Patria potestas in pietate debet, non in atrocitate consistere;* the father's power consists not in the surliest part of empire, but in the sunshine side, in the gentlest and warmest part. *Quis enim non magis filiorum salutem quam suam curat?* saith Tertullian[h]. He is an ill father that will not take more care for the good of his child than his own humour.

§ 35. The like is to be said in case the father offers to his child a person of a condition much inferior. For though this difference is introduced principally by pride and vanity in all the last ages of the world, and nobility is not the reward of virtue, but the adornment of fortune, or the effect of princes' humours, unless it be in some rare cases; yet now that it is in the humours and manners of men, it is to be regarded, and a diamond is really of so much value as men will give for it: and therefore a son or daughter may justly refuse to marry a person whose conjunction will be very dishonourable and shameful: but at little differences children must not start. If the nobility marries into the family of a merchant, the difference is not so great, but that portion makes up the want of great extraction. For a husband or a wife may be γενναῖος ἐκ βαλαντίου, 'noble by their wealth;' so the Greek proverb[i] means: and old Ennius translating of Euripides his Hecuba[j], makes wealth to be nobility,

> Hæc tametsi perverse dicas, facile Achivos flexeris.
> Nam cum opulenti loquuntur pariter atque ignobiles,
> Eadem dicta, eademque oratio æqua, non æque valet[k].

When the rich and the ignoble speak the same things, the rich man shall prevail when the ignoble shall not.

> —— Κεῖνο δ' ἰσχύει μέγα
> πλοῦτος, λαβών τε τοῦτον εὐγενὴς ἀνήρ[l].

[g] L. 'D. Adrianus,' ff. ad legem Pompeian. de partic. [digest., lib. xlviii. tit. 9. l. 5.]

[h] Advers. Marcion. [lib. ii. cap. 15. p. 389.]

[i] [Gaisford, parœm. Græc., pp. 33, 183, 276.]

[j] [297.]

[k] Apud A. Gell., lib. xi. [cap. 4.]

[l] Eurip. in Archelao. [apud Stob. floril., tit. xci. 18.]

Wealth makes nobility. And therefore in such cases, if the sons or daughters refuse the command of their father, it is to be accounted rebellion and disobedience. But this whole enquiry is well summed up in those excellent words of Heliodorus, *Εἰ μὲν γὰρ ἔδει τῷ τῆς ἀρχῆς ἀποχρήσασθαι νόμῳ, πάντως ἐξήρκει μοι τὸ βούλεσθαι· βιάζεσθαι γὰρ οἷς ἔξὸν, τὸ πυνθάνεσθαι περιττόν· εἰ δὲ γάμος τὸ γινόμενον, τὸ παρ' ἀμφοτέρων βούλημα συννεύειν ἀναγκαῖον·* 'if the fathers will use the utmost power of law, it is enough for them to say, it is their will: and it is to no purpose to ask where they have power to compel. But when there is a marriage to be contracted, it is fit that they both consent.'

There are some enquiries relating to the title of this chapter, which would be seasonable enough here to be considered, concerning the powers of husbands over their wives: but because the matrimonial questions and cases of conscience are very material and very numerous, and of all things have been most injured by evil and imperfect principles and worse conduct, I thought it better to leave this to fall into the heap of matrimonial cases, which I design in a book by itself, if God shall give me opportunity, and fit me with circumstances accordingly.

CHAP. VI.

OF THE INTERPRETATION, DIMINUTION, AND ABROGATION OF HUMAN LAWS.

THERE are seven ways of the changing of human laws, so that the obligation of conscience is also changed: I. Equity, II. Judicial interpretation, III. A contrary, or a ceasing reason, IV. Dispensation, V. Commutation, VI. Contrary custom, VII. Direct revocation or abrogation. Of these I am to give account in this chapter, that the conscience having already seen her obligation, may also discern when she enters into liberty.

SECT I.—OF EQUITY.

RULE I.

WHEN THE LETTER OF THE LAW IS BURDENSOME AND UNJUST, THE MEANING AND CHARITY OF THE LAW DOES ONLY OBLIGE THE CONSCIENCE.

§ 1. *Scire leges non est verba earum tenere, sed vim ac potestatem; quia prior atque potentior est quam vox mens dicentis,* say the lawyers[a]; 'the mind of the lawgiver is more to be regarded than his words.' For words change, and things change; and our expressions sometimes the more literal they are, the more obscure they are, because there are more words than things, and the circumstances and appendages are the best commentary.

> Leges perquam egregiæ res sunt; sed is qui legibus utitur
> Nimium exacte, videtur esse sycophanta,

said Menander[b]. It is not the office of a judge or prince, but of a sycophant, to be exact in the use of his laws: but there is abatement

[a] [Digest., lib. i. tit. 3. l. 17.]

[b] [Καλὸν οἱ νόμοι σφοδρ' εἰσίν· ὁ δ' ὁρῶν τοὺς νόμους
λίαν ἀκριβῶς συκοφάντης φαίνεται.—
Menand. apud Stob. floril., tit. xliv. 8.]

and allay to the words by the purpose of him that spake them. For *nullam rem neque legibus, neque scriptura ulla, denique ne in sermone quidem quotidiano atque imperiis domesticis recte posse administrari, si unusquisque velit verba spectare, et non ad voluntatem ejus qui verba habuerit accedere*[b]; 'for nothing can be rightly administered either in laws or common talk, in public or domestic governments, if we regard the words more than the mind of him that spake them.' There are some tacit exceptions in all laws that would not be tyrannical. *Quædam etiamsi nulla significatione legis comprehensa sint, natura tamen excipiuntur*, saith Quintilian[c]; 'natural reason excepts some things which are not excepted in the law.' And it was counted a fierce and cruel piece of importune justice in Basilius Macedo the emperor[d]: when a stag fastened his horn in the prince's belt and tossed him up with very much danger, one of his guard with a falcheon cut the prince's girdle and rescued him from his sad calamity; but he caused the poor man to be put to death, because by the law it was capital to draw a sword upon the prince. The law could never intend to make it death to save the prince's life. Here was a necessity in this case; and if it had been like a fault, yet here it had been excusable; for 'necessity excuses whatever it compels to[e].'

§ 2. Now this happens in the matter of penal laws principally; for those equities which are alleviations of duty, I shall consider under the other heads: but in penalties it is not only the charity but the justice of the law, that the subject should neither be snared by an unwary or obscure letter, nor oppressed by an unequal punishment.

Quid tristes querimoniæ,
Si non supplicio culpa reciditur[f]?

Laws intend not to cut away the life or to pare away the goods of the subject, but to cut off his crimes, to restrain him from that which the law would not have him to do. This in propriety of speaking is justice: but equity although it signifies all that reasonableness by which the burden of laws is alleviated, and so will comprehend the six first heads, yet here I mean it in the particular sense, that is, the easing of punishments, and the giving gentle sentences; not by remission of what is justly incurred, for that is clemency, but by declaring the delated person not to be involved in the curse of the law, or not so deeply; not to punish any man more than the law compels us; that's equity. And to this many rules in the law do minister.

§ 3. 1) *Non debet aliquis considerare verba, sed voluntatem, cum*

[b] Cicero, lib. ii. de invent. [cap. 47.]
[c] [Declam. cccxv.]
[d] [Zonar. annal., lib. xvi. cap. 11. Compare serm. xxiii. vol. iv. p. 617.]
[e] [Necessitas . . quicquid cogit excusat.—Sen., lib. iv. controv. 27. tom. iii. p. 321.]
[f] Horat., l. iii. od. 24. [lin. 33.]

non intentio verbis, sed verba intentioni debeant deservire, said the law[g]. Which is thus to be understood; not that we are blindly to aim at some secret purpose of the lawgiver, for 'the intention of man is to be judged by his words, and not the words by his intention.' But the meaning is, that if some words be obscure, they are to be made intelligible by others. *Incivile enim esse nisi tota lege perspecta una aliqua ejus particula proposita judicare,* says the law[h]. We must in discerning the sense of the law take in all together, the antecedents and the consequences; and if darkness be over all the face of the law, then the intention is to be judged by circumstances, by the matter and the occasion, by the story and by use. *Intelligentia dictorum ex causis dicendi assumenda est,* said S. Hilary[i]; 'by the causes of the law we may judge of the intention of the lawgiver.'

§ 4. 2) When the first sense of the words infers any absurdity, contradiction, injustice, or unreasonableness, the mind of the lawgiver is to be supposed to be otherwise, and the words are not to be adhered unto. *In ambigua voce legis ea potius accipienda est significatio quæ vitio caret, præsertim cum voluntas legis ex hoc colligi possit*[j]. The laws are supposed to be good, and therefore no evil can come from them, and if there does, that was not their mind; for, as Cicero[k] said rarely well, *Verba reperta sunt, non quæ impedirent, sed quæ indicarent voluntatem,* 'words were not invented to obscure, but to declare the will, and therefore not the words but the will is to prevail; for if we could otherwise certainly and easily understand the prince's will, we should never use words.' When Leo Isaurus[l] was in expectation of the Greek empire, he dealt with two astrologers that were Jews: they promised that the sum of affairs would fall into his hands, and he promised them to grant them any one petition they should ask. When he had obtained his desires, they desired him that all the images of saints might be demolished: he granted their request, but put them to death who put it in execution. This was against that mind of the promise which the prince had or ought to have had, and he did not keep his promise though he kept his word; for it is not to be supposed that he promised or intended to reward them with a mischief. So it is in laws, if an evil be consequent to the observation of the letter, the intention is then wholly to be regarded; for *fraudem legi facit, qui salvis verbis legis, mentem ejus circumvenit,* saith the law[m], 'the law is then abused, when you keep the words of the law and prevaricate in the sense and meaning.'

[g] Cap. 'In his,' de verb. signif. [Decret. Greg. IX., lib. v. tit. 40. cap. 15. col. 1775.]

[h] ff. de legib. [digest., lib. i. tit. 3. l. 24.]

[i] Lib. iv. de Trinit. [§ 14. col. 835 E.]

[j] L. 19. ff. de legibus. [digest., lib. i. tit. 3.]

[k] Orat. pro Cæcin. [cap. 18. fin.]

[l] Zonar. [annal., lib. xxv. cap. 3. p. 103.]

[m] L. 'Contra,' ff. de legib. [digest., lib. i. tit. 3. l. 29.] et l. 'Non dubium,' C. de legib. [cod. Justin., lib. i. tit. 14. l. 5.]

§ 5. 3) If the intention be gathered by circumstances, by comparing of laws, by the matter and by appendages, and yet but obscurely, the obscure words are rather to be chosen than the obscure intention. The reason is, because words are the first and principal sign of the intention, and therefore ever to be preferred, and we are to seek no other, but when by accident these are hindered to signify: when the intention and the words do differ, by what means soever the intention can rightly be found out, that must be stood to. *Ex lege esse tam quod est ex sententia legis, quam quod ex verbis*[n]; for that is law which is signified by the words, or by the causes and matter and circumstances. But when in respect of the obscurity on all hands the case is indifferent, we must stand to the words; for there is equity in that, that what is first in every kind should be preferred and be the measure of the rest.

§ 6. 4) Add to this, that unless it be manifest that the words do not represent the intention of the lawgiver, the conscience of the subject is to obey the words of the law: so the law itself says expressly[o], *Non aliter a significatione verborum ejus recedi, quam cum manifestum est aliud ipsum sensisse.* For if this rule were not our measure, every witty advocate might turn laws to what purpose he please, and every subject would take liberty to serve his prince not by the prince's law, but by his own glosses; and then our conscience could have no measure of duty, and therefore no ground of peace.

§ 7. 5) When there is and ought to be a little deflexion from the natural or grammatical sense, and this deflexion is evident and perceived, we must stand to that sense without any further deflexion, as strictly as to the first natural sense. That is, when a word in law signifies many things by proportion and analogy, but one is the principal, we must stand to that principal. As if a law says, he that steals a chalice from a church, let him die the death; the word 'death' must signify naturally, for the separation of soul and body. But if by any other indication it appear not to signify in the first natural sense, then it must signify in that sense that stands next to it; it must stand, as the logicians say, *pro famosiori analogato,* and therefore must signify a 'civil death,' that is, banishment, or the diminution of his head by loss of liberty, according to the usage of the laws. And when it is said, the son must inherit, it is meant, not the natural but the legitimate; or if not this, yet not the adopted but the natural, not the youngest but the eldest.

§ 8. 6) If words used in law have a civil signification, by parity, by extension, by fiction of law, it is then to be followed and chosen, and the natural to be left, when the circumstances, the matter, and the appendages do enforce it, else not: but yet the legal sense of a word, though it prevails not against the natural, yet it must prevail

[n] L. 'Nominis,' ff. de verb. signif. [digest., lib. l. tit. 16. l. 6.]

[o] L. 'Non aliter,' ff. de legat. [digest., lib. xxxii. l. 69.]

in the common sense of law, against the sense of privilege and exception. Among the Romans they who had three children had a right not to be sent to the wars[p]. But if by the common use and signification of the law the word 'children' had signified nephews, or adopted children, although this sense could not have prejudiced the first and natural sense of the word, yet when the emperor[q] gave the same privilege to them that had children in no sense, but to such as made three books, children of the brain, the second sense could not prevail against the first, yet it might against the last.

§ 9. 7) Words that are of civil or legal signification must not signify according to grammar, but according to law. 'Suspension' must not signify hanging of the man, but a temporary laying aside his office or emolument: and 'sacrament' must not in theology signify an oath, but a religious ceremony of Christ's institution. For whatsoever is a word of art must be understood by the measures of that art; and therefore if it be a law term, though that word be used also in common among the people, yet not this sense but that is to be followed in the understanding of the law[r]. But if the law hath no propriety of use or interpretation in the word, but takes it up from the common usages of the country, not the best lawyers, but the best masters of language are the best interpreters. To which this is to be added, that if a word in law be taken from the common use, and this use change, and the law abide, the word in the law must abide the same as does the law, and must not change with the common use: and in this case, not the best lawyers, nor the best grammarians, but the best historians are the best measures of our conscience. The word *censeo* in the law of the Romans at first did signify to 'appoint,' afterwards to 'estimate,' and then to 'censure,' and at last to 'counsel' or to 'suppose.' Now when the word *censere* is used *l. ult. ff. de suis et legit. hæred.*[s], it must not be expounded by Cicero in his oration *pro Cluentio*[t], where it stands for *liquet*, for in this law it stands for *consulere:* and therefore in such cases we are to enquire what the word signified when the law was made, for the word in the old use is not the measure of the present use; neither if it were clear what it meant in the ancient laws, could that be the measure of expounding contracts or human acts or obligations at present; nor yet can that word in that old law receive an interpretation by the difference which it hath got by time.

§ 10. But it may be some of these rules will be but seldom useful to our cases of conscience; possibly they may often: but then to reduce these things to the intentions of the present rule, and to

[p] [vid. M. Verer. de jure liberorum, in tractt. univ. jur., tom. viii. part. 1.]

[q] [Mart., lib. ii. epigr. 91, 2.]

[r] Dialecticorum verba nulla sunt publica; suis utuntur: et id quidem commune omnium fere est artium.—Cicero, lib. i. acad. [cap. 7.]

[s] [Digest., lib. xxxviii. tit. 16. l. 16.]

[t] [cap. 48.]

become a measure of practice, there are three great rules which are the best and most general measures of finding out the meaning of the words of laws in order to equity and conscience, when the grammar or the common use of the words themselves is not sufficient.

§ 11. 1) That is the meaning of the words of the law that does the work of the law. And this is the first rule of equity. For it is but conscience to suppose that he that makes a contract does it *bona fide*, and he that makes a will would have it executed, and he that leaves a legacy would have it do good, and he that appoints a guardian would have one that should be fit for the employment, that the thing in hand may not perish and come to nothing. And therefore Brasidas[u] did cavil, not treat like a prince, when having agreed with the Greeks that he would quit his claim to the Bœotian fields, he afterwards told them that those were not the Bœotian fields but his own where he encamped his army. Which thing if it had been true, they all had treated about nothing. And when the laws of Sicily forbad their priests to resign their benefices to their sons, the two priests of Panormo that agreed together interchangeably to resign theirs to the son of each other, did keep the words of the canon well enough, but they took a course that the law should not acquire its end, and therefore they sinned against its meaning. And this rule is of great use in all doubtful and amphibological expressions, according to that rule in the law[v], *Quoties idem sermo duas sententias exprimit, ea potissimum excipiatur quæ rei gerendæ aptior est.* Thus in the discerning contracts and other entercourses, the substance of the thing and the present employment is more to be considered than any improper or equivocal expression or quirk in the words of the law or entercourse. Antonio Casulano a poor Piedmontane having a sad vintage and harvest one year by reason of the early rains running from the hills before he had gathered his fruits, comes and complains to his landlord Signior Vitaldo, and tells him his sad condition, and how unable he was to pay his rent. Vitaldo pitying his poor tenant, told him he would never exact any thing of his tenants that were ruined by the hand of heaven, and therefore for his rent he bid him be at rest and let it alone. Casulano makes his leg and thanks his lord, and goes home. But the next year he had so brave a harvest and so full a vintage, that it was greater than two years before. He comes and brings this year's rent: but Vitaldo asks him where was the rent of the former year. The tenant says it was forgiven him. Here then is the question, what was meant by 'let it alone,' and 'he would not exact his rent of his disabled tenants;' that is, while they were not able he would forbear them: for there

[u] Thucyd., lib iv. [cap. 98. But the name of Brasidas is wrongly introduced. The error is due to Grotius, de jure belli, lib. ii. cap. 16. § 6.]

[v] L. 67. ff. de reg. jur. [Digest., lib. l. tit. 17.]

all the entercourse was about forbearing the rent, and he never thought to ask his lord to forgive it him. But this sense of the words was *rei gerendæ aptior,* it was agreeable to both their interests in conjunction, and therefore Casulano is bound in conscience to pay his rent. So the lawyers[w] say, *Si ambigua sit intentio seu actio, quod utilius sit actori accipiendum est*[x]. The landlord is to have the advantage of the ambiguity; for besides that he knew his own meaning best, the right was his, and no man is to be presumed to part with his right against his will. And thus it is in the law as well as in contracts, *Amphiboliæ enim omnis in his erit quæstio: aliquando uter sit secundum naturam magis sermo; semper utrum sit æquius, utrum is qui sic scripsit ac dixit, sic voluerit:* so Quintilian[y] draws into a compendium all the rules of expounding doubtful words. First, see whether it be agreeable to the thing in hand, for no man is willing his own act should perish; for this sometimes will do it: but if it will not, then equity must intervene: but if by any other way we know the mind of the lawgiver, that is of all things to be preferred. For though the case be hard, yet if it was the mind of the lawgiver and be not unjust, it must stand. *Quod quidem perquam durum est, sed ita lex scripta est*[z], 'it is hard, but so the law is written.' That is, if the mind of the lawgiver be certain and clear, no equity is to intervene; but when the mind is not known, equity is the best meaning. But of this by and by. This is of great use in religion as well as in justice. For when God gives a command and uses mystical expressions, metaphors, ritual or typical representments, or signifies His pleasure by the outside and crust of services, though this is not to be despised or omitted, yet the spiritual and moral sense and internal service is the principal, that is *rei gerendæ aptior,* more to God's purposes, and more to ours. When God commands us to repent, and to serve Him, he that asks the question, when God would have us to repent, whether it will not serve the turn if we repent at all, if we repent upon our death-bed, because the words of the commandment do indifferently signify any time, here we are rightly determined by this rule, That was God's meaning which does God's work, that without which the work would perish, and God would not be served: for God's intention being that we should glorify Him by a free obedience, and serve Him in a holy life, that which makes God to lose His purpose cannot be the meaning of His words. Thus when God commands us to 'come into His courts,' to 'fall down upon our knees before His footstool,' it must mean that we must worship God with the lowest adoration of our souls, with the prostration of our mind: for the body without the mind being nothing, unless this commandment for bodily worship be expounded to signify the worship of the spirit, God is injured, His intention is

[w] L. 'Ex conducto,' § 'Papinianus.' ff. de usur. [lib. xix. tit. 2. l. 15. § 4.]
[x] L. 66. de judiciis. [lib. v. tit. 1.]
[y] Orat., lib. vii. cap. 9. [ad fin.]
[z] L. 'Prospexit,' ff. qui et a quibus. [Digest., lib. xl. tit. 9. l. 12. § 1.]

defeated: and therefore the law hath taken care of this. *Improprie verba regulariter non accipiuntur, nisi aliter actus vel periret, vel elusorius redderetur*[a], 'words are not to be taken improperly, unless the proper acception of it does elude the purpose of the lawgiver, and makes his law vain.' Thus the very gentiles understood the mind of God: when He commanded men to offer sacrifices and oblations to Him, His meaning was, they should kill their lusts, and sacrifice themselves to God. To this purpose are those excellent words of Menander[b],

Εἴ τις δὲ θυσίαν προσφέρων, ὦ Πάμφιλε,
ταύρων τε πλῆθος, ἢ ῥίφων, ——
—— ἢ κατασκευάσματα,
χρυσᾶς ποιήσας χλαμίδας ἤτοι πορφυρᾶς,
ἢ δι' ἐλέφαντος ἢ σμαράγδου ζώδια,
εὔνουν νομίζει τὸν θεὸν καθιστάναι,
πλανᾶτ' ἐκεῖνος καὶ φρένας κούφας ἔχει.

'He that offers to God the sacrifices of bulls and goats, or of any other beast, gold or rich garments, ivory or precious stones, and thinks by this means to reconcile God to him, is deceived, and is a fool.' When God commanded these things He intended to be understood to other purposes.

Δεῖ γὰρ τὸν ἄνδρα χρήσιμον πεφυκέναι,
μὴ παρθένους φθείροντα καὶ μοιχώμενον,
κλέπτοντα καὶ σφάττοντα χρημάτων χάριν.
μηδὲ βελόνης ἔναμμ' ἐπιθυμῇς, Πάμφιλε,
ὁ γὰρ θεὸς βλέπει σε πλησίον παρών.

For the sacrificer must be a spiritual man, dead unto sin and living unto righteousness; he must be chaste and charitable, just and true, a despiser of the world, and must not desire so much as another man's pin; and he must be the same in private as in public, walking ever as in the presence of God. This is an excellent sum of religion, and the best interpreter of the spiritual sense of Moses' law, next to the sermons of the gospel: but without this the work of God had perished, and religion itself had been illusory. And this is a sufficient warrant for a sense beyond the letter of a commandment.

§ 12. 2) In all laws and obligations of conscience by contract, when any doubt arises, we are to consider what is most likely and what is most usual, and rest upon that. *In contrahendo quod agitur pro cauto habendum*, says the law[c]. We must suppose that the contractor did intend that sense that is the wariest, because that is the most likely; nothing being so reasonable as to think the man intended that which all the world does, that is, to buy cheap and to sell dear. If this will not do it, then we must run to the custom of the country; because the things and manners of

[a] L. 'Cum filiofam.,' ff. de legat. [Digest., lib. xxxii. l. 50.]

[b] [Apud Clem. Alex. strom., lib. v. cap. 14. p. 720; Euseb. præp. evang., lib. xiii. cap. 13. p. 682.]

[c] L. 'Cum quid,' ff. de reb. credit. [Digest., lib. xii. tit. 1. l. 3.]

custom, though they were not in the contract, yet *veniunt in bonæ fidei judiciis*, they are to be of weight in judgments, as being a reasonable decision of questions and obscurities. But if nothing of all this will do, then comes in the principal rule of equity and remissions: *Semper in obscuris quod minimum est sequimur*[d], 'in all things of burden the least is to be chosen.' This is of use in Contracts,—in Testaments,—and in infliction of Punishments.

§ 13. In Contracts.—He that promises to give a man a hundred or two hundred pound, cannot be challenged nor obliged but for a hundred. *In summis semper quod minus est promitti videtur*[e]. The reason is, because when two things of burden are expressed, he that promised must so far be his own judge as to determine himself in the event, when he did not in the stipulation; and therefore it is to be presumed that he would be bound but to the less. For as in the canon law, when a bishop had obtained leave to resign or quit his little bishopric of his superior, it is not granted that he shall be translated to another in the grant of cession; and the reason given in the law is this, *Nam si circa translationem idem fieri voluisset, quod de cessione dixerat, et de translatione poterat expressisse*[f], 'because he that granted a cession, could as easily have said translation if he had so intended:' so here also it is presumed that he intended to give the least, because if he had intended the biggest, he might as easily have said so as to have named a less; and if he intended the greater, he may perform it yet if he please. Thus if Titius promise to pay his debt within a year or two, Caius cannot by virtue of that promise force him to pay it till the two years be out.

§ 14. In Testaments also the case is the same. Mævius makes his will, and leaves Lucius his heir of all, but gives his sister as much as one of his sons. The heir is tied to pay his aunt but so much as that son hath whose portion is the least. Thus when Regulus left to his wife Quintilla the field that was next to the Campus Martius, the prætor understanding that he had two fields next to the Campus Martius, gave her the least of the two[g]: the reason is, because the father is supposed to put upon the heir that burden which is the lighter.

§ 15. But this holds not in all cases: the rule is the same, and ease and remission is to be done, and the gentler sentence is to be followed, and the least burden to be imposed, and the smallest legacy to be paid and received, or the most advantageous sense of favour is to be pursued: but all the difficulty will be to whom the ease or the advantage is to be done; for sometimes one, and sometimes another is to have the benefit of the chancery. *a*) For the heir is to be

[d] L. 9. ff. de regul. jur. [lib. l. tit. 17.]

[e] L. 'Inter stipulantem,' [lib. xlv. tit. 1. l. 83. § 2.] et l. 'Si ita,' ff. de verb. signif. [lib. l. tit. 16. l. 150.]

[f] Cap. ii. § 'Sed neque,' de translat. episc. [decret. Greg. IX., lib. i. tit. 7. cap. 2. col. 204.]

[g] L. 'Cum servus,' § 'Scio,' ff. de legat. [Digest., lib. xxx. tit. 1. l. 39. § 6.] et l. 'Unum ex familia,' § 'Si rem tuam,' ff. eod. [lib. xxi. l. 67. § 8.]

favoured against the legatees, unless God and religion be the legatee, for the church is to be favoured against the heir. And therefore Scævola said, that if a Roman in his testament appointed an image to be set up in a temple in which there were marble and brass and silver statues, the legacy was to be performed in the most costly material; *idque favore Dei et religionis*[h], says the law; because in doubts it is fit that God should have the pre-eminence, and it is also to be presumed that the testator intended to give the best unto the best. Let the instance be changed, and it is a good measure for conscience in the causes and questions of Christians. β) The heir or the donor is to be eased and to be understood in the least sense, unless that least sense makes the gift unprofitable and good for nothing. Aruns dying left a servant to his brother for a legacy. Canidius[i] who was the heir offers to give to his uncle his man Spinax, who was the veriest rogue in all the empire: but his uncle answered, my brother did not intend to give me a mischief. Then he offers him Lentillus, who was little better than a fool. To this his uncle answered, my brother did not intend to give me nothing. And at last the uncle demanded Aretius, who was his brother's physician: but that Canidius refused, and he might very well; but he gave him Merula that was a very good baker, and both were indifferently pleased: but such a one that was not the best, and yet was good for something, was due by justice. γ) Causes of repetition are to be favoured more than causes of gain. He that desires but to save himself, or to get his own, is to have the advantage of him that if he prevails gets gain: and the reason is, because it is better to save a main stake, than to get an accession; it is better to have one preserved than another increased: and it is more to be presumed that he who demands restitution seeks but his own, than that the other's gain is justly his. δ) He that buys in doubts of conscience and law is to be preferred before him that sells, and the interpretation ought to be on the behalf of the first. The reason of this is, because he that sells cannot so easily be deceived as he that buys, for every man is justly presumed to know the price of his own goods, and be cunning in his own trade. ε) For dowries, and ζ) for liberty, and η) possession, sentences are to be given in the favourable sense[k], because the cases themselves are full of charity and mercy; and they that complain in these cases are commonly the oppressed party.

§ 16. This rule also is intended, and that principally, in Punishments and penal sentences of the law. Where if the law be obscure, it is on all hands confessed that the sense of equity is an excellent interpretation, and declares the mind of the lawgiver: and it is also true, that if several penalties be expressed in the law, ordinarily the

[h] L. 'Titia,' 38. § fin. de auro et argent. leg. [Digest., lib. xxxiv. tit. 2. l. 38.]

[i] [Compare vol. ix. p. 193.]

[k] Libertas omnibus rebus favorabilior est. [lib. l. tit. 17. l. 132; et cf.] l. 38. ff. de re judicat. [lib. xlii. tit. 1.]

judge is to impose the least[l]; and the reason is, because he does at once the actions of two virtues; it is justice and it is charity at the same time. I say ordinarily, for sometimes there are great examples to be made, and in them there is very often *aliquid iniqui*[m], nothing of equity, but something that was very hard: and the Hebrew kings (say the rabbins[n]) had a power of causing the malefactor to hang all day and all night upon the accursed tree; though the law was more gentle, and commanded the body to be taken down before the sun set; but if the public necessity required it, the Jewish doctors say that their kings had power.

§ 17. But the great difficulty is, when the words of the law are express, and name the punishment, whether or no can there be any remission by equity or interpretation? Titius being cited to appear in court, came not, and was fined: but he came immediately. The question is, whether he ought in conscience to be relieved. It is certain that in law the sentence against him is just; for let the cause be never so odious, the law must be understood according to the propriety of the words, unless the intention of the lawgiver can otherwise be certainly known. But if by any ways he can be relieved, he ought to be, if there be evident equity on his side. But because this equity is against the solemnity of law, it must be introduced as solemnly, that is, by a law, or a solemn decree according to the disposition of law. But this latter part is matter of prudence more than of conscience; and concerning this conflict of law and equity Cicero hath spoken excellent things, as who please may see in his oration *pro Cæcina*, and in his *lib. ii. vet. rhet.* But for the practice of it both in law and conscience it is an excellent rule of law[o], *Rapienda est occasio quæ præbet benignius responsum;* an occasion must not be forced against law, but if any can be found it must be used in the behalf of equity. And therefore Celsus, Marcellus, and Ulpian are noted with a fair memory for being studious of equity in the sentences of law: and for this very thing Cicero[p] commends Servius: but Scævola, Paulus, Julianus, and the Sabiniani and some others, were more propense to rigour and subtilty, and were less beloved.

Triste rigor nimius: Torquati despue mores[q].

Titus Manlius was to blame in putting his son to death for a glorious victory gotten by a little offence. But all good laws were ever desirous of easy interpretation when the matter itself was a burden: and it was well said of Gattinara to the emperor Charles the fifth[r],

[l] L. 'Interpretatione,' ff. de pœnis. [lib. xlviii. tit. 19. l. 42.]

[m] Habet aliquid ex iniquo omne magnum exemplum, quod contra singulos utilitate publica rependitur, dixit C. Cassius apud Tacitum. [annal., lib. xiv. cap. 44.]

[n] [Ugolin. thesaur. antiq. sacr., tom. xv. col. 766. cf. p. 184 supra.]

[o] L. 168. ff. de reg. jur. [Digest., lib. l. tit. 17.]

[p] Philipp. ix. [cap. 5.]

[q] Claudian. [de iv. Honor. cons. 403.]

[r] Apud Guicciard., lib. xvi. [vid. cap.

Chi vuole troppo abbracciare, va a pericolo di non strignere cosa alcuna, 'he that strains the cord too hard, breaks it and can bind nothing.' *Periculosum est prægrave imperium: et difficile est continere quod capere non possis*, said Curtius[s]. He that fills his hand too full, lets go more than he should. There is a measure in laws, which must not take in every thing, but let some things pass gently; for a government that is too heavy is dangerous: and therefore without all peradventure when the punishments are general, the least special ought to be taken. Thus gentlemen are not to be punished with the punishment of slaves and vagabonds. If bodily punishment by law be commanded, scourging is to be understood, or such as is in use in the nation, and not the cutting off a member, or putting to death, say the Greek lawyers[t]. And there is no exception to this, but this only, that this is to be understood in lighter offences, not in greater; for in these it may be of as much concernment to justice that the severer part be taken, as it is to charity that lighter offences should carry the lighter load. And therefore the *S. C. Syllanianum* decreed that if a slave had killed his lord, all the slaves in the house should die for it. It was a hard and a severe law; but it was a great crime, and by great examples the lives of masters were to be secured: and to this purpose C. Cassius the lawyer defended it with great reason, as is to be seen in his oration in Tacitus[u].

§ 18. 3) In matters of favour and matters of piety the sense of the law is to be extended by interpretation. Things odious and correctory are called *strictæ* in the law, and that which is favourable is called *res ampla;* because as the matter of that is to be made as little as it may be, so the matter of this may be enlarged. Thus if any thing be done in the favour of the children, the adoptive and the natural are included, when it is not to the prejudice of the legitimate. And that which is made legitimate is to be reckoned as that which is so of itself; and he that is naturalized is to be reckoned as a native; and a freed man as he that was born free; and the privileges granted to a city are to be extended to the suburbs. But this rule is to be estimated as the former, there being the same reason of contraries, save only that there is in the matters of favour something of particular consideration. For although it is by the former measures set down who are the persons and which are the causes to be favoured and eased, yet those persons are not in all cases to receive the advantage; that is, they are in all cases which the words of the law can bear, except that by that favour the whole process be evacuated, or the thing be lost. Therefore although the guilty person is favoured in all the methods and solemnities of law, where the law can proceed,

5.]—Gall. proverb. 'Qui trop embrasse, mal estreint.' [See the 'Dictionnaire des proverbes François, par G. D. B.' 8vo. Brux. 1710. s. v. 'Embrasser.']

[s] Lib. iv. [cap. 11. § 8.]

[t] Ad l. pen. ff. de pœnis. [Basilic., lib. lx. tit. 51. tom. vii. p. 861.]

[u] [Apud Tacit. annal., lib. xiv. capp. 43, 4.]

yet where the favour would hinder the proceeding, the accuser and not the guilty person is to receive it. For the accuser hath the advantage of taking his oath in law, which the guilty person hath not; because the law supposes he will deny the fact, right or wrong. And thus we are also to proceed in our private entercourses of justice and charity, we are rather to believe the accuser swearing than the accused. But if the accusation be not sworn, or if the guilty person be brought into judgment upon suspicion only and a public fame, we are rather to believe the accused swearing his innocence, than the voice of fame or uncertain accusers.

SECT. II.—JUDICIAL INTERPRETATION.

RULE II.

WHEN THE POWER THAT MADE THE LAW DOES INTERPRET THE LAW, THE INTERPRETATION IS AUTHENTICAL, AND OBLIGES THE CONSCIENCE AS MUCH AS THE LAW; AND CAN RELEASE THE BOND OF CONSCIENCE SO FAR AS THE INTERPRETATION EXTENDS, AS MUCH AS IF THE LAW WERE ABROGATED.

§ 1. WHEN the law is interpreted by the emperor, *ratam et indubitatam habendam esse,* say the lawyers. The reason is plain and easy. The law is nothing but the solemn and declared will of the lawgiver; and he that speaks best knows his own mind; and he that can take away the law can alter it; and he that can cut off the hands may certainly pare the nails: and since the legislative power never dies, and from this power the law hath its perpetual force, and can live no longer than he please, by what method of law soever he signify his mind, whether it be by declaring the meaning of the law, or by abating the rigour of it, or dispensing in the case, or enlarging the favour, or restraining the severity, it is all one as to the event and obligation of conscience. The interpretation is to the law as the echo to the voice; it comes from the same principle; and though it speaks less, yet it speaks oftener, and it speaks enough, so much as is then to be the measure of the conscience in good and evil.

§ 2. For when the lawgiver does interpret his law, he does not take off the obligation of the law, but declares that in such a case it was not intended to oblige. Tacitus tells of a Roman knight who having sworn to his wife that he would never be divorced from her, was by Tiberius dispensed with when he had taken her in the unchaste embraces of his son-in-law. The emperor then declared that the knight had only obliged himself not to be divorced unless a great

cause should intervene. Thus we find that pope Lucius[y] the third did absolve those from their oath that sware they would not speak to their father or mother, brother or sister, or shew them any kindness: but this absolution quitted them not from the sin of a rash and impious oath, but declared that they were not bound to keep it. *Absolvit, i. e. absolutum ostendit,* as pope Nicholas did in the case of the archbishop of Triers, he declared him to be at liberty; and the gloss[z] derives a warranty for this use of the word out of the prophet Isaiah.

§ 3. It was ill said of Brutus, that a prince might not be more severe nor yet more gentle than the law. For there are many things *quæ natura videntur honesta esse, temporibus sunt inhonesta,* saith Cicero[a]; 'which at first sanction of the law and in their own nature are honest, but in the change of times and by new relations become unjust and intolerable:' and therefore the civil law allows to princes a power *juvare, supplere, corrigere*[b], 'to help, to supply, to correct' the laws. For those are but precarious princes who when they see a case that needs a remedy cannot command it, but like the tribunes of Rome, when they offered to intercede and interpose between Fabius and the sentence of Papirius the dictator by which Fabius was condemned, could effect nothing till they went upon their knees in his behalf. But it is worse that the laws of a nation should bind the prince as Jupiter in Homer was bound by the laws of fate, so that he could not help his son Sarpedon, but sat weeping like a chidden girl. But of this I have already given sufficient accounts. The supreme power is *dominus legum, canon animatus in terris, lex animata, fons justitiæ, supra jus dispensare potens,* as Innocentius[c] said of himself; and therefore of this there can be no question. *Inter æquitatem jusque interpositam interpretationem nobis solis et oportet et licet inspicere,* saith the emperor, *C. de leg. et const. princ.*[d] The prince alone hath power to intervene between equity and strict law by his interpretation. This is now to be reduced to practice.

§ 4. First this power must be administered with nobleness and ingenuity; not fraudulently, or to oppress any one, which Cicero[e] calls *calumniam, et nimis callidam, sed malitiosam juris interpretationem,* 'a crafty and malicious commentary.' Such as was that act of Solyman[f], who after he had sworn never to take from Ibrahim Bassa his life, killed him when he was asleep, because Talisman the priest declared that sleep is death. Thus the *triumviri* in Rome[g]

[y] [Rather pope Urban III.] c. 'Cum quidam,' § Illi vero de jure. [Greg. IX. decret., lib. ii. tit. 24. cap. 12. col. 753.]

[z] C. 'Auctoritatem,' 15. q. 6. gloss. magn. verb. 'Absolvimus.' [cap. 2. col. 1178.]

[a] Lib. iii. de offic. [vid. cap. 4.]

[b] L. 'Jus autem,' § 1. de just. et jure. [Digest., lib. i. tit. 1. l. 7.]

[c] C. 'Proposuit,' de concess. præbend. [Greg. IX. decret., lib. iii. tit. 8. cap. 4. col. 997.]

[d] [Cod. Justin., lib. i. tit. 14. l. 1.]

[e] Lib. i. de offic. [cap. 10.]

[f] [Annal. Turc. ad calc. Chalcond., p. 346. fol. Par. 1650.]

[g] [Appian. de bell. civil., lib. iv. cap. 30.]

having a mind to kill a boy, which by the force of law they could not do, they gave him the *toga virilis*, and forced him to be a man in estimation of law, that by law they might oppress him: and Mithridates king of Armenia thought himself secure when Rhadamistus the son of Pharasmanes the Iberian king had promised he would neither stab nor poison him[h]; but the young tyrant interpreted his promise maliciously when he oppressed him with pillows and feather beds: and all Europe hates the memory of the archbishop of Mentz[i], who having promised to Atto Adel, a palatine of Franconia, that he should safely return out of his castle, did indeed perform the letter of his word; but pretending kindness as well as justice, when he had brought him forth of the castle, passionately invited him to breakfast, and then killed him when he re-entered. The power of princes to give senses to their laws must be to do justice and to give ease to the pitiable and oppressed.

§ 5. Secondly, this power is not to be administered but upon grave and just causes: for to be easy and forward in bending the laws by unnecessary interpretations is but a diminution of justice, and a looseness in government; as was well observed by Livy[k], speaking of those brave ages in which the Roman honesty and justice was the beginning of the greatest empire of the world, *Sed nondum hæc quæ nunc tenet sæculum negligentia divum venerat, nec interpretando sibi quisque jusjurandum et leges aptas faciebat, sed suos potius mores ad ea accommodabat,* 'the neglect of the gods and the laws was not gone so far as to bend the laws to the manners of men, but men measured their manners by the laws:' and then no man can deny to a prince leave to derogate from his laws by such interpretations. *Licet enim regi in civitate cui regnat, jubere aliquid quod neque ante illum quisquam, neque ipse unquam jusserat,* saith S. Austin[l]; 'a king in his own dominions may command that which neither any man before him, or himself before that time commanded:' meaning that although he must govern by his laws, yet when there is a favourable case, he may give a new sense to them, that he may do his old duty by new measures. Thus Solomon absolved Abiathar from the sentence of death which by law he had incurred, because he had formerly done worthily to the interests of his father David. Thus when Cato Censor had turned L. Quinctius Flaminius out of the senate, the majesty of the Roman people restored him; and though they had no cause to do it, yet they had power. Now this power though it may be done by interpretation, yet when it is administered by the prince it is most commonly by way of pardon, ab-

[h] [Tacit. annal. xiv. 47.]

[i] [This treachery was practised by Hatto archbishop of Mentz upon count Albert of Franconia,—Marian. Scot. A.D. DCCCCVIII. inter Pistorii rer. German. script., tom. i. p. 644; Otho Frising., lib. vi. cap. 15. in bibl. patr. Cisterc. per Bernard. Tissier, tom. viii. p. 74.]

[k] Lib. iii. [cap. 20.]

[l] Lib. iii. confess., c. 8. [tom. i. col. 94 A.]

solute power and prerogative. Thus princes can restore a man in blood. *Fas est cuivis principi maculosas notas vitiatæ opinionis abstergere*[m]. So Antony the emperor[n] restored Julianus Licinianus whom Ulpian the president had banished. When a law determines that under such an age a person shall be uncapable of being the general of an army, the supreme power can declare the meaning of the law to be, unless a great excellency of courage and maturity of judgment supply the want of years: in which very case Scipio Africanus[o] said wisely, when he desired to be employed in the Punic war, *se sat annorum habiturum si populus Romanus voluerit*, 'he should quickly be old enough if the Roman people pleased.' Thus Tiberius put Nero into the senate at fifteen years of age, and so did Augustus the like to Tiberius and his brother; and the people declared or dispensed the law in Pompey's case, and allowed him a triumph before he had been consul or prætor.

§ 6. But to this there is not much to be said; for he that can make a new law, may by interpretation change the old into a new; that is, any interpretation of his is valid, if it be just, naturally just, though it be not according to the grammar or first intention of the civil or municipal law: *quia si leges condere soli imperatori concessum est, etiam leges interpretari solo dignum imperio esse oportet*[p]. He that can do the greater can do the less; and he that hath power of cutting off the head, can dispose of the tongue as he please, so that if it will not speak what he would have it, he can take a course it shall speak nothing against him. But the case is otherwise in judges.

§ 7. For the interpretation of laws made by judges is matter of fidelity and wise dispensation, but nothing of empire and power; and it is a good probable warranty of conscience, but no final determination in case any cause of doubt happens to oppose it. And this was well observed by Cicero[q]: *Nemo apud judices ita solet causam agere; ignoscite judices, lapsus est, non putavi, si unquam posthac. In senatu vero, et apud populum, et apud principem, et ubicunque juris clementia est, habet locum deprecatio.* No man is to ask any favour of the judges but what the law allows him, but of the prince he may;

> A quo sæpe rei, nullo licet ære redempti,
> Accipiunt propriam donato crimine vitam[r].

For what is wanting in the provisions of law he can make up by the fulness of his power: and if there be no injury to any, let there be what favour or indulgence he please, his interpretation is good law, and can bring peace to the conscience in the particular. According

[m] Cassiodor., lib. iii. var. ep. xlvi. [tom. i. p. 54.]
[n] L. 'Cum salutatus,' C. de sent. pass. [Cod. Justin., lib. ix. tit. 51. l. 1.]
[o] [Liv., lib. xxv. cap. 2.]
[p] L. ult. C. de legib. [Cod. Justin., lib. i. tit. 14. l. 12.]
[q] Pro Ligario. [cap. 10.]
[r] Guntlfer., lib. iv. [Ligurin., p. 344. inter vet. script. German. J. Reuberi.]

to this is that of the lawyers[s], *Qui jurato promisit judicio sisti, non videtur pejerasse, si ex concessa causa hoc deseruerit,* 'he that hath sworn to appear in judgment is not perjured if he hath leave given him not to appear:' meaning, from him that can interpret the law, or dispense, declare the man not bound, or give leave to break it. But when the judges interpret a law, they either expound it by customs of the court or country, or else by learning and wise conjectures. Interpretations by prevailing and allowed customs are good law and sure measures of action according to the doctrine of customs; of which in part I have given account, and shall yet add something in the sixth section of this chapter, and therefore I shall add nothing here. But if the judges' interpretation be only doctrinal, it is sufficient to us that it is not introductive of a law, and it cannot of itself be a resolution of conscience; but it is to be made use of according to the doctrine of probabilities[t]. This only is to be added, that if the authorized judges do consent, and by a delegation of power, or the customs of the nation, or the disposition of the law, the sentence does pass *in rem judicatam,* 'into a legal sentence,' then it obliges as a law; for it is a warranted interpretation, and declares the sense of the law, and consequently does bind the conscience.'

SECT. III.—A CONTRARY OR CEASING REASON.

RULE III.

A LAW MADE FOR A PARTICULAR REASON, WHEN THE REASON WHOLLY CEASES, DOES NO LONGER OBLIGE THE CONSCIENCE.

§ 1. THE title of this section implies a distinction of reasons considerable in this particular: for sometimes it happens that only one reason dies, and there is no other change, but that the efficient cause of the law, from whence it had its being, is dead. But sometimes it is more than so; for not only the reason of the law is gone, but a nettle is risen up in the place of it, and that which was once profitable is become intolerable, and that which was just is now dishonest, and that which was righteous will not be righteous still, but against the public interest. Now when a contrary reason does arise there is no peradventure but the law ceases: and this is to be extended not only to the case of injustice or impossibility, but of trouble or of uselessness; that is, if the contrary reason makes things so that the law could not justly have been imposed, or if it had

[s] L. ult. ff. qui satisd. cog. [Digest., lib. ii. tit. 8. l. 16.]

[t] Lib. i. chap. 4. [rule 15. vol. ix. p. 219.]

been *de facto* imposed, it could not oblige the conscience, then the conscience is restored to liberty and disobligation. But then this case must be manifest: for if it be doubtful, the law retains her power; for it is in possession, and the justice of it is presumed.

§ 2. But if the reason of the law ceases only, and no more, there is some more difficulty, for it may be the will of the prince does not cease, and he intends the law should last for the support of his authority; and that will be reason enough to keep up a law that once was good and now hath no harm in it: and there ought to be a great reason that shall change a custom, though it be good for nothing; and where there was a law, a custom will easily be supposed, especially if the law was useful and reasonable, as we suppose in the present case. And if the law did prevail unto a custom, and that it be not safe to change a custom, then, though the proper reason of the law be ceased, there is another reason arisen in the place of it that will be enough to bind the conscience to obedience. For the stating of this question it is still necessary that we yet first distinguish, and then define.

§ 3. 1) Some laws have in them a natural rectitude or usefulness in order to moral ends, by reason of the subject matter of the law, or by reason that the instance of the law is made an instrument of virtue by the appointment of law. 2.) Others have only an acquired rectitude, and an extrinsic end; that is, it was by the lawgiver commanded in order to a certain purpose, and beyond that purpose it serves for nothing. Thus when a prince imposes a tribute upon a country for the building of certain bridges, when the work is done the tribute is of no public emolument. But if he imposes a fast upon wednesdays and fridays for six months to obtain of God to remove the plague from a city or a country, though the plague be gone before the end of four months, yet the fast may serve many other good ends.

§ 4. 2) Another distinction to be considered is concerning the cessation of the reason of the law, whether the reason be intrinsical or extrinsical. For sometimes the reason ceases universally. Sometimes it remains as to the generality, but is altered in the particular cases. So if a superior commands that none of his subjects shall enter into such a family where there are many fair women amorous and young, lest such a conversation should tempt them to wantonness; the general reason of the law remains, although Alexis be an eunuch, and old Palæmon have a dead palsy upon him and cannot be warmed by such fires. The reason ceases in the particular, but abides still in the general.

§ 5. 3) A third thing is also to be observed, which hath in it some difference of case. Sometimes there are many parts of a law, and sometimes it is uniform and hath in it but one duty. That which hath parts and is a combination of particulars may cease in one or more of them, and the rest abide in their full usefulness and

advantage. And these and all the former may be useless, or their reason may cease for a time, and be interrupted, and awhile after return: and in all these the reason may cease negatively, or contrarily; that is, the first cause may cease, or another quite contrary may come.

According to these distinctions, the cases and the answers are several.

§ 6. 1) If there be two ends in the law, an extrinsical and an intrinsical; though the extrinsical be wholly and generally ceased, yet the law obliges for its intrinsic reason, that is, when it commands an act of itself honest and virtuous. Thus if a prelate or a prince commands women in churches to sit apart, and to wear veils that they may not be occasion of quarrels and duels amongst young gentlemen; if it happen that the duelling of gallants be out of fashion, and that it be counted dishonourable to fight a duel, then that end of the law ceases: and yet because it is of itself honest that women should have a veil on their head for modesty sake, and 'because of the angels[u],' this law is not to cease, but to stand as well upon one leg as it did before upon two. But this can only be when divine and human laws are complicated, or at least when human laws are mixed with a matter of perfection and counsel evangelical, or of some worthiness, which collaterally induces an obligation distinct from the human law.

§ 7. 2) If a law be appointed for an extrinsical end, when that reason ceases universally, though there be an inherent and remaining worthiness in the action, and an aptness to minister to a moral end, yet that law binds not unless that moral end was also intended by the lawgiver. For that which was no ingredient into the constitution of the law can have no power to support the law, for it hath nothing to do with the law; it never helped to make it, and therefore by it cannot be a law, unless by the legislative power it be made anew. So that such actions which can be good for something of their own, and are not good at all for the end of the lawgiver, can only be lawful to be done, but they are not necessary. Therefore when a law is made that every thursday the subjects should go to church to morning prayer, that they might in the public offices pray for the life of the prince, if the prince be dead that law obliges not; for although going to morning prayer is of itself good, yet if the prince had no consideration of that good, but of his own, that good entered not into the law, and had no causality in it, and therefore was no part of the duty of the subject in relation to that law.

§ 8. 3) If the action commanded by law be in itself indifferent, when the reason of the law ceases extrinsically, the whole obligation is taken away, because the act is good for nothing in itself, and good

[u] [But see vol. v. p. 331.]

for nothing to the commonwealth, and therefore cannot be a law. Thus there was an oath framed in the universities[v] that no professor should teach logic publicly any where but there, meaning that it should not be taught in Stamford, whither the scholars made so long a recess that it had almost grown into an university. But when the danger of that was over the oath was needless, and could not oblige, and ought not to have been imposed. In Spain a law was made that no man should cut any timber-trees: in a few years the province grew so full of wood that the reason and fear of the law was over; and it was more likely to pass into inconvenience by abundance than by scarcity, and therefore then it was lawful for any man to cut some of his own. So if a law were made for ten years to forbid hunting of wild beasts, that some royal game which was almost destroyed might be preserved for the prince, if in five years the wolves and lions were grown so numerous that there were more danger than game, the law were no longer obligatory. For as Modestinus[w] said well, *Nulla ratio aut juris benignitas patitur, ut quæ salubriter pro hominum commodis statuta sunt, nos duriore interpretatione contra ipsorum commodum producamus ad severitatem;* 'it is against reason that what the law decreed for the good of men should be severely and rigorously expounded to their damage.' And this is to be understood to be true though the reason of the law ceases only negatively; that is, though the act do still remain indifferent, and there be no reason to the contrary. To which this is to be added, that when the reason of a law commanding an action otherwise indifferent does cease universally, the very negative ceasing passes into the contrary of itself: not that it does so in the matter of the action, for the action is still indifferent and harmless, but that it does so in the power of legislation: it does not so to the subject, but it does so to the prince; that is, the subject may still do it without sin, but without sin the prince cannot command it to be done, when it is to no purpose. Thus we find in the legends of the Roman later saints that some foolish priors and superiors of convents would exercise the obedience of their monks by commanding them to scrape a pebble, to fill a bottomless tub, and such ridiculous instances; which were so wholly to no purpose, that though the monk might suffer himself to be made a fool of, yet he was not tied to it in virtue of his obedience, and the prior did sin in commanding it. This ought to be observed strictly, because although it looks like a subtilty, yet it is of use in the conduct of this rule of conscience, and hath not been at all observed exactly.

§ 9. 4) When the intrinsical reason of a law does cease universally, the negative ceasing of the reason passes into a contrary; and if the action be not necessary it is not lawful. For actions which

[v] [A.D. MCCCXXXV.—Anthony à Wood, history, &c., of Oxford, by Gutch, vol. i. p. 431.]

[w] L. 'Nulla,' ff. de legibus. [Digest., lib. i. tit. 3. l. 25.]

have in them an internal rectitude have it so always, unless the case be wholly changed, and then it is become very evil. To restore that which is deposited with us is commanded because of the natural justice that is in the action; but when the reason of this ceases, that is, that it is not just to do it, it is unjust, or uncharitable: and therefore if you restore to a mad-man his sword[x] to kill an innocent, you are unjust to innocence, and but equivocally just to madness and folly.

§ 10. 5) When a law hath many parts, and is a conjugation of duties for several reasons, when one of the parts of the law does loose the reason of it wholly, though it be tied in the same bundle, and by the same tie, yet that part is slackened and obliges not, though included in a law which does oblige. The reason of this is the same with the former; only this is to be added, that in this case it is not one law, but a conjugation of laws; it is not a single star, but like a constellation, and particularly as the Pleiades, where one of the seven hath almost no light or visibility, though knit in the same confederation with those which half the world do at one time see. And the same also is the case in the suspension of a law, that is, when the reason ceases universally and wholly, but not for ever: while the reason is absent, the conscience is not tied to attend; but when it returns to verify the law, the duty returns to bind the conscience. But in this there is no difficulty.

These are the measures of conscience when the reason of a law ceases wholly and universally, that is, as to the public interest; but that which is more difficult is when the reason of the law remains in the general, but it fails in some particular cases, and to particular persons: and what then is our duty, or our liberty?

§ 11. The reason of the difficulty is, because laws are not to regard particulars, but that *quod plerumque accidit*, saith Theophrastus[y]; and therefore the private damage is supplied by the public emolument: and the particular pretences are not to be regarded, though they be just, lest others make excuses, and the whole band of discipline and laws broken. *Satius erat a paucis justam excusationem non accipi, quam ab omnibus aliquam tentari*, said Seneca[z]; 'it is better to reject the just exception of a few than to encourage the unjust pretensions of all.' And therefore subjects should for the public interest sit quietly under their own burden. For *Lex nulla satis commoda est; id modo quæritur, si majori parti et in summa prodest*, said Cato[a]: 'it is a just law if it does good to the generality and in the sum of affairs.' And therefore if Caius or Titius be pinched in the yoke, they may endure it well, when they consider the public profit.

[x] [Cic. de offic., lib. iii. cap. 25.]
[y] [Digest., lib. i. tit. 3. l. 6, et lib. v. tit. 4. l. 3. in fin.]
[z] [De benef., lib. vii. cap. 16.]
[a] [Apud Liv., lib. xxxiv. cap. 3.]

§ 12. But this were very true only in case there were no other remedy; but our enquiry here being only a question of conscience, which is to be judged by him that commands justly in general, and will do no injustice in particular, and can govern all things without suffering them to entangle each other, the case will prove easy enough: for if God does not require obedience to the laws, when the reason of the law ceases in particular, of them I say in whose particular case the reason ceases, it is all that is looked for. Now for this the conclusions are plain.

§ 13. 1) If the extrinsic reason of the law ceases in a particular case only negatively, that is, so as no evil grievous burden, sin, or danger be incumbent upon his person, the law retains her obligation and is to be obeyed; because in that case, although there be no reason in the subject matter, yet there is reason enough in the reverence of the law, and in a conformity to the public manners of the nation. Thus when the law forbids a citizen to bear arms in the night because of frequent murders that have been done or are apt to be done by armed night-walkers; he that knows himself a peaceable man and that is resolved to offend nobody is not bound by the reason of that law in his own particular, but he is bound by the law as long as the public is bound whereof he is a part: for if he have no reason to the contrary, but only there is no reason for it in his case, it is reason enough that there is a law in the case, which is useful to the public, and of great interest as to the communities of men. And therefore he that disobeys in these circumstances cannot be excused from contempt of the law: because though his obedience be causeless, yet so is his disobedience, and this cannot be innocent, though that can; especially because though the obedience be causeless in his own particular in relation to that matter, yet it hath cause enough in it in relation to example and the veneration of the laws.

§ 14. 2) If the reason of the law ceases contrarily, that is, turns into mischief; then though it ceases only in a particular, in that particular the subject whose case it is is free (from the law I mean, but not free to obey it). Whatever we have vowed to religion or the temple we are bound to perform: but if in the interval of the solution my father or my nearest relative, or any to whom I am bound to shew piety, be fallen into want, or needs my ministry, I am bound to do this first, and let that alone till both can be done: and the reason is, because I could not bind myself by vow to omit any duty to which I am naturally obliged: and therefore though the law that commands payment of vows be just, yet it must be always with exception of preceding obligations; so that if it be certainly a sin which is consequent to the obedience of any law, it is certainly no sin to disobey it.

§ 15. 3) If the general reason of the law remaining, in some particular cases it ceases contrarily, but not so as to introduce a sin,

but a great evil, or such an one which the law would not have commanded, and the lawgiver is supposed not to have intended, the law does not oblige the conscience of the subject in that case. For here is the proper place for equity. In the former case it is duty not to obey the law. Either then there is no equity but what is necessary and unavoidable; or if there can be any shewn or used by prudence and great probability, and in mercy, it follows that then it is to be used when the yoke pinches the person, though it does not invade the conscience. And it is not to be supposed that a superior would have his laws burdensome to any one beyond the public necessity; it being as certainly in his duty to be willing to ease single persons in their private burdens as to provide for the common interest in their great and little political advantages. Τό τε γὰρ ἐπιεικὲς δικαίου τινὸς ὂν βέλτιόν ἐστι δίκαιον. Equity is as much law as the law itself, it is 'as just as justice, only that it is a better justice,' saith Aristotle[x]: it is not δίκαιον νόμιμον, the 'legal justice,' but ἐπανόρθωμα νομίμου δικαίου, 'a rectification and an amendment of it.'

Bonum jus dicis; impetrare oportet, qui æquum postulas,

said he in the comedy[y]; 'it is fit that you prevail, you ask reason and equity.' That's *bonum jus;* it is justice and mercy in a knot. Thus if a church commands such ceremonies to be used, such orders, such prayers, they are to be observed when they may; but if I fall into the hands of an enemy to that manner of worship, who will kill or afflict me greatly for using it, I am in that case disobliged. For though this case be not excepted in the law, yet it is supplied by the equity and correction of the law: ὀρθῶς ἔχει, ἢ παραλείπει ὁ νομοθέτης καὶ ἥμαρτεν ἁπλῶς εἰπὼν, ἐπανορθοῦν τὸ ἐλλειφθὲν, 'it is fit that when the lawgiver hath commanded absolutely and indefinitely, he should in cases of particular evil make provision and correct what was amiss or omitted by the law.' For εἰ ᾔδει ἐνομοθέτησεν ἄν, says Aristotle[z]; 'if he had known of it before he would have provided for it before-hand:' and because he did not, ὁ κἂν νομοθέτης οὕτως ἂν εἶποι ἐκεῖ παρὼν, 'if the lawgiver were present,' he would use equity and give leave to the grieved subject to ease himself. And therefore since it is reasonable to suppose that if it had been thought of, this very case would have been provided for in the law; and if the lawgiver were present he would declare the law in that case not to oblige; it follows undeniably, that the law binds not any man to a great inconvenience in his own person, though otherwise, and as to the public, it be a just and a good law, of a remaining reason and a remaining obligation. In order to this consideration that is useful which hath been already said in the first chapter of this book, in the second and third rules.

§ 16. 4) If the reason of the law ceases in a particular, so that

[x] Ethic., l. v. c. 14. [tom. ii. p. 1137.] [z] [ubi supra.]
[y] Plaut. Stich. [act. v. sc. 4. 44.]

without sin it may be obeyed, and without any great and intolerable evil to the obedient, yet sometimes the law does not intend to oblige in the particular case, even when there is a little inconvenience, or but a probable reason to the contrary; and this is in things of small concernment. I should instance in rituals and little circumstances of ecclesiastical offices and forms of worship, in the punctualities of rubrics, in the order of collects, in the number of prayers, and fulness of the office upon a reasonable cause or inducement to the omission or alteration: for these things are so little, and so fit to be intrusted to the conduct of those sober, obedient and grave persons, who are thought fit to be trusted with the cure of souls; and these things are always of so little concernment, and so apt to yield to any wise man's reasons and sudden occasions and accidents, and little and great causes, that these were the fittest instances of this rule, if superiors, for want of great manifestations of their power, would not make too much of little things. But the purpose and declared intention of all just laws and just governments is in these things to give the largest interpretation to persons of a peaceable mind and an obedient spirit; that such circumstances of ministries may not pass into a solemn religion, and the zeal of good men, their caution and their curiosity, may not be spent in that which does not profit. But the measures of practice in this particular must be taken from the manner and circumstances of the government, and the usual disposition of the law. In many cases an equity may be presumed; but if it be explicitly denied it must not be used.

QUESTION.

§ 17. But upon the instance of these particular rules it is to be enquired whether in these cases the subject is so quitted from the obligation of the law, that without further leave he may use his liberty, or must he require it of his superior?

§ 18. To this I answer,

1) That if the case be evident, the subject may use his liberty: for if he should be tied to go to his superior, it is either to ask of him that the law should not bind him, or that he may declare that the law in his case does not bind, or to promulgate and publish the law in that particular. Not to ask leave that the law shall not bind, for of itself it ceases, and it was never intended to bind against equity and reason. Not for declaration, because the case is here supposed to be evident. Nor yet lastly for promulgation, because that is only necessary in the sanction and revocation of laws which depend upon the will of the prince; whereas in this case the law ceases by natural justice and the nature of the thing, and the reasons of equity.

§ 19. 2) But if the case be doubtful, and it is not evident whether the particular case ought to be excepted in the general law, then we are to consider whether it be a doubt of fear only or

a doubt of reason, that is, whether it be nothing but an unjust fear, or relies upon just grounds; for some men may easily perceive in themselves a diffidence in any thing, not that they have reason to cause their fear, but because they dare not trust the greatest reason that they either have or hear. If it be only a doubt of fear, then it is to be conducted by the rules given concerning a scrupulous conscience[a]: if it be a fear of reason, we are to manage it by the measures of a doubting conscience. But if he supposes upon probable inducements that he is not obliged, then according to the nature of the probability we are to proceed. For if he believes it as probable that such a case ought not to be comprehended in the law, as supposing it to be a sin that in his case would be commanded, or too great a burden imposed, and so to be beyond the power of the lawgiver, then the subject may of himself be free, without recourse to his superior. The reason is, because to avoid a sin, or to do a great charity to ourselves, a probable reason is a sufficient inducement, provided a more probable reason be not opposed against it, we being commanded to avoid all appearance of evil. Now if this opinion be the more probable, that by obeying the letter of the law in my case I should sin, it must needs appear to be an evil to do it, and not to obey the law in this case does not appear to be an evil, as being the less probable: for if the opinions be equally probable, then the conscience is in doubt, and is to proceed by measures fitted to a doubting conscience: but when I say there is a greater probability and a less, the greater must carry it; and therefore the law is not to be obeyed, it being here supposed to be the more probable opinion that the obedience would produce a sin. So also in the case of a great burden or intolerable pressure, the presumption is for ease; and the lawgiver is to be supposed good and gentle and reasonable; and besides, it is supposed as the more probable opinion that the lawgiver hath not power to make a law or to oblige to so much inconvenience, and then the case is the same. But if he believes it as probable that to oblige in the present case was not in his will, but it is certain that it was in his power, then the case is so that the subject may without injustice or violence obey it; and therefore ought not to use his liberty by his own opinion, but by recourse to his superior that hath power to declare the intention of the law.

§ 20. In the first case if it be easy and convenient to go to the superior, or that there is time enough and all things fitted, it were the surer way to require his sentence. But if there be not time, and the action urges by hastiness, or necessity, or present opportunity, the liberty is as present as his need. But in the second case, (which is oftentimes harder to know than the first, it being more difficult to pronounce definitively concerning the will of the lawgiver which is free, than concerning his power which is not free,) when it is only

[a] Vide lib. i. cap. 5 and 6. [vol. ix. p. 220 sqq.]

probable that the lawgiver is willing, it is not safe to venture upon the not-obeying, without recourse to the superior. Because our innocence depending wholly upon his will, and there being no sin in keeping the law, we may safely do this; but we cannot safely disobey without being more assured of his leave: and therefore if it be opportune and easy to have recourse to our competent superior, it is worth our pains to go and enquire; if it be not opportune, it is worth our stay till it be; for the securing our duty and the peace of conscience are interests much greater than the using of an unnecessary liberty.

§ 21. 3) But in these cases of uncertainty, when we are not confident of a just liberty by the force of reason and the nature of the thing, we may justly presume that the superior does not intend to oblige in all those cases in which he usually and of course dispenses; that is, when his dispensation is not of special favour, but of ordinary concession; because as in the first case it is supposed a gift, so in this latter it is supposed a justice. For example, a law is made to keep so many fasting-days. Mævius is a hard student, and feels himself something ill after fasting, and believes it will not be for his health; but yet things are so with him that he can obey the law without great or apparent mischief, but yet he probably believes that the lawgiver would not have him bound in this case. If he perceives that they that have recourse to the superior in less needs than his are ordinarily dispensed with, then he hath reason enough not to go to his superior; for it is already declared that he does not intend to bind in his and the like cases. This is evident, and the best measure that I know in such cases. It is the surest, and the largest, and the easiest.

§ 22. 4) When the recourse to a superior for declaration of the case hath in it great difficulty or inconvenience, though the cause of exception from the law be not very great, yet if together with the inconvenience of address to the superior it make up an unequal burden, and so that the particular case seem very probable to be excepted, and that in it the legislator did not intend to bind; it is sufficient to consult with wise men and good, and by their advice and answer, as by extrinsical causes of probability, or by any other just and probable cause of determination, to use our liberty, or to obey. The reason of this is plain necessity. Because we have no other way of proceeding, but either we must in this, as in almost all the other cases of our life, be content with the way which to us seems the more probable; or else if we were tied to make it secure, our lives and conditions would be burdensome and intolerable, and the whole process would be a snare and torment to a conscience: the superior, who is to be consulted, it may be, not being within forty miles of us; or when we come, it may be he is of difficult access, or otherwise employed, and it will be impossible for many to be heard by him, if all in the like cases were bound to consult him; or it

may be when we go we shall not be admitted, or if we be, it may be we shall not be eased unless we carry along with us the rewards of divination in our hands, and we are poor; or it may be the matter requires haste, and cannot stay the leisure of the oracle; and besides all this, the greatest part of the actions of our lives are not so well conducted as to be determined by the consultation of a wise man, but we do them of our own head, and it may be of our own heart, without consideration; and therefore it is a prudent course to proceed this way: and he that in such cases ties the consciences to proceed more than prudently, and thinks that prudence is not a sufficient warrant, does not consider the condition of human nature, nor the necessities of a man's life, nor the circumstances of his condition, nor the danger of an unquiet and a restless conscience.

§ 23. Upon occasion of this subject, viz., the alteration of human laws by the interpretation and equity of reason, it is very seasonable, and very useful to conscience, to enquire whether by the similitude of reason the law may not as well receive advantage and extension, as well as the subject can receive liberty and ease. That is,

QUESTION.

Whether the obligation of the law does extend itself to all cases that have the same or an equal reason, though the case be not comprehended directly in the law.

To this the answer is by several propositions.

§ 24. 1) In laws declarative of natural right or obligation, the obligation extends to all things of equal reason, though they be not comprehended under the law. Thus because we are bound by the laws to pay honour and gratitude to our parents for their nourishing of us and giving us education, the same duty is to be extended to those persons who took care of us when our parents were dead, or that took us in when we were exposed; and children are to pay a proportionable regard even to their nurses; and Moses was for ever obliged to Pharaoh's daughter, because she rescued him from drowning, and became as a mother to him. And the reason of this is, because in these things there is a natural rectitude, and a just proportion between the reason and the event; the reason of the thing is the cause why it was commanded. But in laws dispositive or introductive of a new obligation there is some difference. Therefore,

§ 25. 2) In odious cases, and especially in penal laws, the extension of the reason does neither extend the obligation nor the punishment; according to that gloss in the canon law[b], *In pœnis non arguimus ad similia, quia pœnæ non excedunt proprium casum.* Punishments and odious burdens must not exceed the very case set down in the law: for if in the cases set down the judges are to

[b] Gloss. in cap. 'In pœnis,' 49. de reg. jur. in 6. [lib. sext. decret., col. 747.]

give the gentlest measure; it is not to be supposed that they can be more severe than the letter of the law, which itself requires an abatement and allay when it is capable: and as it is with judges in the punishments appointed by law, so it is with all the subjects in the obligation of the law. For in both these cases, it is to be presumed that the mind of the lawgiver was not to oblige or to punish more and in more cases; for *si voluisset expressisset*, is a good presumption in these things, he could as easily have spoken that as this, if he had intended both alike; and he would, because he knows that in odious things every one is willing to take the easiest part: and therefore that is a good warranty to presume of the mind of the lawgiver; especially since the apportioning such a punishment to such a fact hath in it no natural necessity, but depends upon the will of the lawgiver, and therefore is not to be extended by a participation of the reason, but by a declaration of the will.

§ 26. 3) When there is a defect in the law, and the public necessity or utility requires a supply, it may be supplied, and the obligation and the judgments even in matters of burden can be extended by the similitude and parity of reason; for in this sense it is true which the lawyers say, *Casus similis expresso non censetur omissus.* If it was omitted only in the law, by the imperfection of its sanction, or want of consideration, the commonwealth must not suffer detriment, and therefore is to be helped by the parity of reason. But then it is to be observed, that this is not wholly for the force and consequence of the reason of the law, but for the necessity and profit of the republic, and therefore the supply is to be made by jurisdiction rather than by interpretation: so saith the law[c], *Is qui jurisdictioni præest, ad similia procedere, atque ita jus dicere debet,* 'the præfect that hath jurisdiction must do right by proceeding to the like cases:' so that the jurisdiction and power is the sufficient and indeed the adequate efficient of this supply; only by the similitude of reason he that hath jurisdiction can take occasion to do right. *Quando lex in uno disponit, bonam esse occasionem cætera quæ tendunt ad eandem utilitatem vel interpretatione vel certa jurisdictione supplendi*[d]; 'the law having made provision in one case, it is a good occasion to supply other cases which tend to the same advantage; but this supply is to be made either by interpretation, if it can, or if it cannot, then by certain jurisdiction and authority.' So that here are three things to be considered in this extension of obligation. The one is, that the law be defective and need supply. The second is, that the supply be for the same utility and advantage which is in the expressed case of the law. And the third is, that if it cannot be by interpretation, that is, if it cannot be done by force of something contained in the law, but that there be a very defect

[c] L. 'Non possunt,' ff. de leg. [Digest., lib. i tit. 3 l. 12.]

[d] L. 'Nam,' ff. eod. [l. 13.]

in the law, it be done by the force of authority: for the similitude of reason is not enough, and therefore either the supreme, or a jurisdiction delegate with this power in special, is necessary. But where there is such a power, the way of doing it is *procedendo de similibus ad similia*[e], the occasion of supply must be taken from the similitude of the reason. But this I say is to be done either in cases of public necessity, or great equity and questions of favour. In other cases there are yet more restraints.

§ 27. 4) A similitude of reason (except in the cases now expressed) does not extend the law to cases not comprehended in the words and first meaning of the law. For *Ratio legis non est lex, sed quod ratione constituitur*, say the lawyers[f], 'every thing that is reasonable is not presently a law, but that is the law which for that reason is decreed.' And when a thing is propounded to a prince, it is in the body politic as in the body natural; though the understanding propound a thing as reasonable, the will still hath power to choose or to reject it: and there may be reason for the thing in one regard, and reason against it in another; and if the reason in both cases only be alike, they are also unlike. *Omne simile est etiam dissimile.* For Titius contracts friendship with Callinicus because their fathers were fellow-soldiers in the Parthian war, and they loved well: but Titius refuses to contract the same league with Catulus, although the like reason was for him, his father having been in the same legion in the same war; but Catulus was an ill-natured man, and not fit to be entertained into such societies.

§ 28. 5) The conscience is not bound to a greater duty than is expressed in the words and first meaning of the law by the proportion and communication of the reason, unless the reason be not only alike, but be absolutely the same in both cases; and not only so, but that the reason was adequate to the law, that is, was the reason which actually and alone did procure the sanction of the law. When Cæsar took a town in Gallia Narbonensis, he destroyed the walls, and commanded they should not build any more walls: they consented, but cast up a great trench of earth; and he came and fired their town, because although a trench of earth was not in the words of the contract or prohibition, yet because Cæsar forbad the rebuilding of the walls for no other reason but because he would not have it fortified, the law against walls was to be extended to trenches also for the identity of an adequate reason. To the same purpose is that of Quintilian[g], *Cædes videtur significare sanguinem et ferrum: si quis alio genere homo fuerit occisus, ad illam legem revertemur.* A law against murder does commonly signify shedding of his blood; but if a man have his neck broken, or be smothered with pillows, or strangled with a bow-string, he shall be

[e] [Glossa in legem prædict.] D.D.
[f] Albertus Bologneti Bonon. in tract.
[g] In declam. patris. [declam. eccl.]

avenged by the same law that forbad he should be killed with a knife or dagger: for it was not the instrument or the manner which the law regarded, but it wholly intended to secure the lives of the subjects.

§ 29. 6) Now this identity of reason must be clear and evident, or else it effects nothing; for in matters of doubt the presumption is for liberty and freedom. But it commonly is best judged by one or more of these following cases. *a*) The relative and the correlative are to be judged by the same reason when the reason of the law does equally concern them, though only one be named in the provision of the law. If the husband must love the wife, the wife must love the husband, though she were not named in the law. For here they are equal. But in superior and inferior the reason cannot be equal, but therefore is only to be extended to the proportion of the reason. A son must maintain his father that is fallen into poverty, and so must a father a son: but they are not tied to equal obedience; to equal duty they are, but not to equal significations and instances of it. A husband must be true to his wife's bed, and so must she to his; but she may not be admitted to an equal liberty of divorce as he is: the reason is, because the duty is equal, but the power is unequal; and therefore the consequents of this must differ, though the consequents of the other be the same. *β*) The identity of the reason is then sufficient for the extension of the law when one thing is contained under another; a particular under a general, an imperfect under a perfect, a part under the whole. *γ*) When the cases are made alike by the effort of other laws. *δ*) When the law specifies but one case for example sake, the rest also of the same nature and effect are comprehended. *ε*) When the cases are radicated in the same principle, and are equally concerned.

§ 30. 7) What is here said concerned cases and actions is also to be understood, not only of persons, which cannot be separated from the consideration of actions which are always personal, but of places and times, when the analogy and force of the reason or the words require it. Only each of these is to observe their proper caution. Places are equally included in the meaning of the law, though they be not expressed in the words of the law, if they be within the jurisdiction of the lawgiver, that is, within the capacity of the law[i]. But the caution concerning time is this, that although in laws declarative there is no difference of time, because there the present law is not the measure of our duty, but supposes the duty limited and prescribed before (*nihil enim nunc dat, sed datum significat,* saith the law in this case[k]); yet laws constitutive or introductive of a new right or obligation never of themselves regard

[i] See chap. i. rule 8 of this book. [p. 60.]

[k] L. 'Hæredes,' § 1. ff. de testam. [Digest., lib. xxviii. tit. 1. l. 21.]

or can be extended to what is past, because this is not in our power, and is not capable of counsel or authority; but they can only be extended to the future: but the allay is this, for this is to be understood only in precepts and prohibitions, but not in matters of indulgence and favour; for in this it is quite contrary: what the law hath forbidden in time past or present, and what she hath or doth command is to be extended to the future; but *cum lex in præteritum quid indulget, in futurum vetat*[l], 'when the law gives a pardon for what is past,' and this pardon relies upon a proper reason, there is no leave given for the future to do so, though the same reason shall occur; for the pardon of what went before is a prohibition of what is to come hereafter.

§ 31. 8) When a law is made to take away an evil, it is to be understood also, and to be extended to all cases of prevention, and from an actual evil passes on to a probability. When Antiochus agreed that Ptolemy should not bring an army into Syria, he did not only intend to remove the present hostility that he feared, but he intended also that he should not bring any at all, though for passage only through his country; because if his army were at all in Syria, he was in danger of suffering what by his treaty he desired to prevent.

§ 32. 9) Whatsoever is said in laws is also true in promises and contracts: for these are laws to the contractors and interested persons, and to be measured by the same proportions. For when the adequate reason of a promise or contract is evidently extended to another instance, though not named in the contract, it must be performed and supposed as included in the stipulation, and so still in succeeding and new arising instances; and the state of things is not changed so long as that adequate reason remains for which the obligation was first contracted, though the thing be varied in a thousand other circumstances and accidents. But of this I shall have better opportunity to speak in the last book.

§ 33. I only add this one thing, that there is great caution to be used in determining our cases of conscience by the measures of the reason of a law. For *non omnium quæ a majoribus constituta sunt ratio reddi potest*, said Julian[m]. It will be hard to find out what was the reason of the laws made by our forefathers; and unless the reason be expressed in the law, our conjectures are very often so wild and far amiss, that they will be very ill measures of conscience or obedience. *Et ideo rationes eorum quæ constituuntur inquiri non oportet, alioquin multa ex iis quæ certa sunt subvertentur*[n]. We must obey the law, and never enquire after the reason, unless the law of itself declares it: it is not good to examine, for by this means many clear laws are made obscure and intricate. *Delicata est illa obedi-*

[l] L. 'Cum lex,' ff. de legib. [lib. i. tit. 3. l. 22.]

[m] ff. de leg. [ibid., l. 20.]

[n] [Nerat. ibid., l. 21.]

entia quæ causas quærit[o]. The lawgiver is moved to the sanction of the law by the reason of the thing, but the sanction of the law is to be the only reason of our obedience.

SECT. IV.—DISPENSATION.

RULE IV.

THE LEGISLATOR HATH AUTHORITY TO DISPENSE IN HIS OWN LAWS FOR ANY CAUSE THAT HIMSELF PRUDENTLY SHALL JUDGE TO BE REASONABLE, SO THAT NO DISTINCT INTEREST BE PREJUDICED OR INJURED.

§. 1. DISPENSATION differs from interpretation of laws, because this does declare the law in certain cases not to bind; but dispensation supposes the law in actual obligation, not only in general, but in this case and to this person; and it is but like the old man in the fable his laying aside his burden of sticks, which he is bound to carry with him to his long home unless some friendly person come to help him. But dispensation differs from diminution of laws by a ceasing or a contrary reason, because the law ceases of itself in this case, but in dispensation wholly by the will of the prince. And lastly it differs from equity, because equity is law, *melior lex*, but dispensation is a remission of the law; and the cases of equity are such as by justice must be eased, but in dispensations there is nothing but benignity and favour. So that dispensation is a voluntary act of the prince's grace and favour, releasing to any single person or community of men the obligation of the law, others at the same time remaining bound, not only in other cases, but in the same and in the like. For although the same and the like cases of equity do procure remission to all alike, yet in dispensations it is not so. One may be eased and another not eased in the very same case. And the not understanding or not considering this great and material difference hath caused so great errors both in the understanding and in the ministries of dispensation.

§ 2. For if we use the word improperly, 'dispensation' can signify a declaration made by the superior that the subject in certain cases is not obliged, that the lawgiver did not intend it: but this is interpretation of laws, or a declaration of the equitable part of the law,

[o] [Bernard. de præcept. et dispens., cap. xiii. col. 930 D; cf. vol. ix. p. 64.]

and is not properly an act of authority, but of doctrine and wisdom; save only that that doctrine and that wisdom shall be esteemed authentical, and a warranty in doubtful cases: but if the subject did know the meaning of the law, as in most cases he may, his conscience is of itself and by the intention of the law at liberty without any such declaration; for that liberty is from an intrinsic cause, that is, from the natural equity and reasonableness of the case, and therefore claims nothing but what the law intends and ought to intend in its very sanction. Now in these cases to require dispensation, is to ask more than is needful; it is as if one should desire his friend to untie his girdle when his clothes hang loose about him: he needs it not; but that the wisdom and charity of the law is made an artifice to get money, and to put the subject to scruples and trouble that he may get his ease.

§ 3. But when dispensation signifies properly, it means an act of mere grace and favour, proceeding from an extrinsic cause; that is, not the nature of the thing, or the merit of the cause, but either the merit of the person, or some degrees of reasonableness in the thing; which not being of itself enough to procure the favour of the law, is of itself enough to make a man capable of the favour of the prince; and if this be authority enough, that is reason enough. For since dispensation is an act of mere jurisdiction, and not of doctrine or skill and wisdom and law, that is, it is not declarative of something already in being, but effective of a leave which is neither unreasonable nor yet due, so that it is not an act of justice, but of mercy and favour upon a fair and worthy occasion; it must follow that the reason and causes of dispensation must be such as are not necessary: but probable and fit to move a prince they must be, lest he do an unreasonable act.

§ 4. All those disputes therefore amongst the civil and canon lawyers and the divines, whether the prince sins in dispensing without just cause, or the subject in desiring it or using it without just cause; whether if the cause be not that which they are pleased to call just the dispensation be valid, and very many more, are enquiries relying upon weak grounds, and tending to no real purpose. For since the cause need not be necessary, but probable, it will be very hard if the prince can find out no probable reason for what he does, and harder yet to imagine that he should do it at all, if he have not so much as a probable reason why he does it; and since the reason of dispensation is extrinsic to the cause or matter in hand very often, or else is but occasioned by the matter in hand, as most commonly it is in wise and good governments, it will be impossible but that the prince will have reason enough to do an act of kindness in his own affairs and matters of his own disposing: the prince's will being enough to satisfy us, and any good reason within or without being sufficient for him if it does move and determine his will, the consequent will be, that the conscience ought to be at rest, without curious

enquiry into the cause, if it have a dispensation from a just and competent authority.

§ 5. And indeed it is not easy that the prince can be reproved for the insufficiency of the cause of dispensation: for a dispensation is not necessary to the conscience at all, when the cause itself is great and sufficient for equity; but then it is necessary for the avoiding of scandal or civil punishments in some cases that there be a declaration of liberty and equity: but to dispense is only then proper and a fitting ministry, first, when the law is still useful and reasonable to one or more good purposes, but accidentally becomes an impediment of a greater good; or secondly, when it is doubtful whether the cause of equity and legal remission without asking leave be sufficient; for in this case, if the superior dispenses, he supplies by favour what is wanting in the merit of the cause, and makes the conscience sure when the question itself was not sure; or thirdly, to reward a virtue, or the service of a worthy person, or to do honour or favour, mercy, and benignity, upon the occasion of any reasonable consideration. These being all the causes of proper dispensations, it will be hard that every thing of this should be wanting, or that what moves a prudent prince to do it should by the subject not be thought sufficient, especially since no man is judge of it but he that does it: and therefore he that says the dispensation was for an insufficient cause, hath no sufficient cause to say it; it may be evil in the manner, or in the excess, or in the event, but not in the moving cause, because a little cause is sufficient, and therefore a little cause cannot suffice to blame it. *Nullius sensus esse præsumitur qui sensum vincat principalem*[p]. The subject's opinion can never overcome the opinion of the prince in those things where the prince is judge.

§ 6. There is only this to be added, that he that dispenses with a law to particular persons be careful that it be in a matter wholly in his own power, and make no intrenchment upon religion so much as collaterally, so far as he can perceive, nor yet that any man be injured by it. And therefore if a prince dispenses with any one in the matter of tribute, he must abate it from his own rights, and not lay it upon others, to their considerable and heavy pressure. If it be inconsiderable, no man is to complain, but to indulge so much to the prince's reason and to the man whom the king will honour; but if it be considerable and great, the prince ought not to do it but upon such a reason which may repay the private burden by the public advantage: and the reason of this is not because the supreme power cannot dispense with his own laws without great cause, but because he cannot dispense with other men's rights. And therefore when by the laws of christendom the tithes were given to the curates of souls of all the fruits arising in their parishes, it was unjustly done of the pope to exempt the lands of the Cistercians and some other orders from

[p] L. fin. C. de legib. [Cod. Justin., lib. i. tit. 14. l. 12.]

paying that due to the parish priest: for though he that hath a just power may use it for the benefit of his subjects, yet he may not use the rights of others, and give away that which is none of his own, to ease one and burden another. In cases of public necessity this may be done, but not for pleasure or a little reason. And therefore dispensations must be sparingly granted, because if they be easy and frequent, they will oppress by their very numbers. *Dispensationum modus nulli sapientum displicuit*, said the canon law[q]. That which is but seldom and in small things, or in little degrees, will be of no evil effect, and that which may greatly profit one or two will be no burden to a commonwealth; but if it be often done, and to many, it may be of evil consequent, and therefore ought not to be done but upon a cause so weighty that the good effect of the cause may prevail above the pressure of the dispensation: for though this may be favour to one or to a few, yet it is justice to all. But if the dispensations be in matters of government, or censures, or favours and mere graces, where some are benefited and no man is injured, as in taking off irregularities, personal burdens which return to no man's shoulders, in giving graces beyond the usual measures of laws, dispensations in time, in solemnities of law giving what by law could not be claimed; in these and the like the prince as he hath supreme power, so his good-will, being moved by any reasonable inducement, is warrant enough for him that gives it and for him that uses it.

SECT. V.—COMMUTATION

RULE V.

THE SAME POWER THAT CAN DISPENSE CAN ALSO COMMUTE A DUTY; AND AS IN THE FIRST IT EASES, SO IN THE LATTER IT BINDS THE CONSCIENCE.

§ 1. COMMUTATION is nothing but a kind, or rather a particular manner of dispensation; and therefore hath in it no particular consideration differing from the former, but only such prudential advices as are useful to the ministry and conduct of it.

§ 2. For commutation is a changing of the burden of the law into an act of, it may be, a greater usefulness but a less trouble. Thus when a public penance is enjoined to a lapsed person, who by a public shame would be hardened or oppressed, the church sometimes

[q] 1. q. 7. [Cyril. Alex. ad Gennadium, apud Gratian. decret., part. 2. caus. 1. quæst. 7. cap. 16. col. 657.]

dispenses in the obligation, and changes it into alms, *ut solvat in ære, quod non luit in corpore,* that the fruit of his labours may go for the sin of his soul, and an expensive alms may be taken in recompence of his exterior humiliation.

§ 3. 1) But this must be done so as may be no diminution to religion, or to add confidence to the vices of great persons, who spend much more in the purchases of their lust than in the redemption of their shame, and therefore think they escape with their sin when they enjoy it at a price.

§ 4. 2) It must be done never but upon considerations of piety and great regard; not because the sinner is powerful or rich: for though in matters of commutative justice neither the rich man is to be regarded for his riches, nor the poor man for his poverty; yet in matters criminal and of distributive justice the rich man is less to be eased when the indulgence makes the crime more popular and imitable by the greatness of the evil example; but he is more to be eased when the punishment will by reason of his greatness of honour be too unequal a diminution to him, and cause a contempt greater than the intention of the law.

§ 5. 3) The commutation of the punishment imposed by law must at no hand be done at a set price beforehand, or taxed in penitentiary tables, and be a matter of course or indifferent dispensation: for when men know the worst of the evil which they fear to be very tolerable and easy, it is an invitation, and does tempt to the sin. But therefore this must be done by particular dispensation; not easily, not to all, not to many, not at all for the price, but to relieve the needs of him who is in danger of being swallowed by too great a sorrow.

§ 6. 4) Commutations are not to be imposed but when the dispensation is something of ease in a law of burden; for then to change it into a less burden is a dispensation by a commutation of which it is properly capable. Thus when abstinence from flesh is enjoined by a law, it may be upon good ground dispensed withal and changed into an abstinence from wine or strong drink, or society, or into alms. But when laws are made which contain in them no burden, but are in order to some end of personal or public advantage, some end of virtue, or caution, or defence; then either the dispensation (when it is reasonable to be required) must be without commutation, or if it be not, the commutation must be made into something that shall contribute to the end intended in the law. Thus if any one hath reason to desire to be dispensed with in the publication or trine denunciation of an intended marriage, it is not reasonable, nor according to the intention and wisdom of the law, to change that law into a tax of money, though for alms and religion; but it may be done by commanding them to abstain from mutual congress till the secret marriage can prudently be made public; because this commutation does in some degree secure the end of the law, and makes

some amends for want of publication of the banns. If a deacon have reason to desire to receive the order of priesthood from one that is not his own diocesan, the bishop that dispenses with him cannot prudently or justly require of him to give a sum of money for the reparation of a church; because that, though it be a good work, yet it is not in the same matter, nor does it co-operate toward the wise end of the law: but he does well if he enjoins him to procure and carry along with him greater testimonials of his conversation and worthiness, and that he publish his intention to all his own neighbourhood, that they may, if they see cause, object against him; and he may not be promoted by a clancular ordination.

§ 7. 5) I might add here, that in commutations the pretences of charity and alms and religion must not be the cover of avaricious practices and designs; but that this, although it be useful in respect of the corrupted manners of men, yet it is nothing to the explication of this rule.

SECT. VI.—CONTRARY CUSTOM.

RULE VI.

A CUSTOM CAN INTERPRET A LAW, BUT CAN NEVER ABROGATE IT WITHOUT THE CONSENT OF THE SUPREME POWER.

§ 1. THE doctrine of customs both in divine laws and in human I have already[r] explicated, so far as concerns their positive power, and the power of binding the conscience to obedience and complying. That which now is to be enquired is concerning their power to disoblige and set at liberty: and even this also may very well be estimated by those positive measures, and hath in it not very much of special consideration, save this only, that there is very great reason of dissenting from the commonly received doctrine of the power of customs in this very particular.

§ 2. For although by the consent of all the world custom can introduce a law, according to that saying of Tertullian[s], *Consuetudo in rebus civilibus pro lege suscipitur, cum deficit lex,* 'when there is no law, it is supplied by custom;' and this is so far to be extended, that if the custom be reasonable and antecedent to a law, it shall remain after the making of a law in that very matter, *nisi expresse caveatur*

[r] Book ii. chap. 3. rule 19. [vol. ix. p. 692]; book iii. chap. 4. rule 15. [vol. x. p. 358.]

[s] De coron. milit. [cap. iv. p. 103 A.]

in ipsa[t], unless the law does expressly cancel it by particular caution: yet when a law is established and is good, the force of custom is not sufficient of itself to annul it, and to cancel the obligation of conscience.

§ 3. A custom can interpret a law. *Si de interpretatione legis quæratur, in primis inspiciendum est, quo jure civitas retro in hujusmodi casibus usa fuisset,* says the law[u]. For it is to be supposed that the law was obeyed, and in that sense in which the lawgiver intended it; and that the people do their duty in things of public concern is a just and a legal presumption: and therefore nothing is more reasonable in questions concerning the interpretation of a law, than to enquire how the practice of the people was in times by-gone, because what they did when the reason and sense of the law was best perceived, and what the lawgiver allowed them to do in the obedience of it, may best be supposed to be that which he intended. Upon this account the judged cases in law are the best indication of the meaning of the law; because the sentence of the judges does most solemnly convey the notice of a custom, and allow it reasonable, and by those customs does interpret the law, so that they give aid each to other; the custom gives assistance to the judges in understanding the meaning of the law, and the judges giving sentence according to the custom declare that custom to be reasonable; according to that in the Spanish laws[x], 'That custom is for ever hereafter to be observed, *si secundum eam bis judicatum fuerit,* if there have been two sentences pronounced according to the custom.' But this use of custom is expressed both in the civil and canon law. *In ambiguitatibus quæ ex legibus proficiscuntur, consuetudinem aut rerum perpetuo similiter judicatarum auctoritatem vim legis obtinere debere*[y]. Custom and precedents of law are as good as law in all questions of law and of doubtful interpretation: and therefore the presidents of provinces were commanded to judge by the measures of custom: *probatis iis quæ in oppido frequenter in eodem controversiarum genere servata sunt, causa cognita statuat*[z]; see what is the custom of the place, and by the measures of that let the decree pass. And so it is in the canon law[a], where a certain bishop is commanded to enquire what is the custom of the metropolitan church and the churches in the neighbourhood, *et diligentius imitari,* 'to follow it diligently,' meaning both in practice and in sentences. Now in this, if the conscience can be relieved and the rigour of the law abated by the aids of custom, it is safe to use it, and to proceed according to the rules of equity described in the beginning of this chapter.

[t] C. 1. de constitut. in 6. [lib. sext. decret., lib. i. tit. 2. col. 11.]

[u] L. 'Si de interpret.,' ff. de legibus. [Digest., lib. i. tit. 3. l. 37.]

[x] Vide Burgos de Paz, in l. 1. Tauri, num. 247. [apud Suarez. de leg., lib. vii. cap. 11. p. 465.]

[y] L. 'Nam imperator,' ff. eod. [l. 37.]

[z] L. 1. C. quæ sit longa consuet. [Cod. Justin., lib. viii. tit. 53. l. 1.]

[a] Cap. 'Super eo,' de cognat. spirit. [Decret. Greg. IX., lib. iv. tit. 11. cap. 3. col. 1375.]

§ 4. But all this is therefore reasonable because it is *consuetudo secundum legem*, it is 'according to law;' all the ease and abatements of which that are reasonable the conscience may safely use. But if a custom be against a law, the law and not the custom ought to prevail; for a custom cannot take off from us the duty and obedience we owe to the just laws of our superiors. *Consuetudo nec rationem vincit nec legem*[b]. As in divine laws reason and truth can never be prejudiced by contrary customs, so in human laws the authority and obligation cannot be annulled by desuetude alone. For although a man may get impunity and save his skin whole under the protection of contrary custom, yet our enquiry is for the indemnity of conscience: and as to this, it is considerable that when a custom contrary to law does enter, it enters by neglect or disobedience, by rebellion or contempt, it proceeds all the way in the paths of iniquity; for still men go *qua itur, non qua eundum est*[c], they go like frighted or wandering sheep, there where the gap is open, not where the way lies: and it will be impossible that such customs should be a warranty to the conscience, and that it should be lawful to break a law, because the law is broken; that disobedience should warrant rebellion[d]; and that it be innocent to follow the multitude to sin. So that so long as the custom is alone and walks by itself, it walks amiss: but if by any means this custom pass into lawful, as a traveller that goes so far westward and still goes on till at last he comes to the rising of the sun, then it is not by any force of the custom, but by first obtaining pardon and then procuring leave.

§ 5. For it is observable that in law customs themselves are esteemed illegal and reprobate if they be against law. *Licet usus consuetudinis non minima sit auctoritas, nunquam tamen veritati aut legi præjudicat*[e]; 'use and custom hath great authority, but nothing against truth or law:' and *non valet consuetudo contra canonicam institutionem*[f]; for the custom is unreasonable if it be against law; for *illam dico rationabilem quam non improbant jura*, saith the gloss *in cap. ult. de consuet., verbo 'Rationabilis;'* and the Lateran council defines those customs to be reasonable, *quæ ratione juvantur et sacris congruunt institutis*, 'which are assisted by reason and are agreeable to the holy canons.' Now because a custom is by no law admitted unless it be reasonable, and that by all laws those customs are judged unreasonable which are against law, we have reason to withdraw ourselves from the practice of such customs though they be never so general and long, unless they be by some other means allowed.

[b] L. 2. C. quæ sit long. consuet. [Cod. Justin., lib. viii. tit. 53.]

[c] [Sen. de vit. beat., cap. i. tom. i. p. 526.]

[d] Non posse præscribi contra obedientiam.—cap. 'Cum non liceat,' de præscript. [Decret. Greg. IX., lib. ii. tit. 26. cap. 12. col. 805.]

[e] Cap. 'Cum causa,' de re judicata. [ibid., tit. 27. cap. 8. col. 822.]

[f] Glos. in cap. 'Ad nostram,' de consuet., verb. 'Canonicis.' [ibid., lib. i. tit. 4. cap. 3. col. 83.]

§ 6. And therefore there is wholly a mistake in this doctrine upon the account of an ἐναντιοφάνεια, and some antinomies in law: for it is certain that in the civil law, and in the laws of many nations anciently, the custom of the people was esteemed sufficient to abrogate a law; but it began first and continued long only in those commonwealths where the people had power to make a law, or had some pretensions and colours of that power which were not wholly to be taken from them: and therefore, *Rectissime receptum est, ut leges non solum suffragio legislatoris, sed etiam tacito consensu omnium per desuetudinem abrogentur*[g], 'laws are abrogated not only by the express revocation of the lawgiver, but by the secret consent of all.' And the reason of this is well expressed by Julianus the lawyer[h], *Quid interest suffragio populus voluntatem suam declaret, an rebus ipsis et factis?* 'It is all one how the people signify their will, by suffrages or by actions:' meaning that so long as the legislative power was in them, they had power to revoke their own law by custom as well as by voice, at long running as well as at one convention. But when the people are not their own subjects and their own princes (for so they are in all popular governments), but that the prince or the senate hath the legislative power, they cannot introduce a custom but by rebellion and disobedience. In democracies, when the people did otherwise than their own laws required, they disobeyed themselves, and so were innocent and out of danger; but now they cannot disobey but they sin, and a sin can never of itself lead a man to innocence, nor a lie to truth, unless it be by the help of some other intervening cause; of itself alone it cannot. But this affair relies upon the same ground which I formerly discoursed of in this book[i]; for the mistake of men is alike in both. The obligation of a law does not depend upon the acceptation of the people; and as a law hath not its beginning, so neither can it have its perpetuity dependently upon them; and no man thinks it hath but he who supposes the supreme power to be originally in the people, and in the king by trust; and there are too many to think that, for there have been so many democratical governments that many wise men have said so, because then they had reason; but so many popular governments have also produced popular opinions, which being too much received even by wise men, have still given the people occasion to talk so still, and to very many to believe them.

§ 7. But if a contrary custom could justly abrogate a law, then it were no matter who had the legislative power, for whatever the prince please, the people shall choose whether it be a law or no; which because it is a perfect destruction to all government, must needs proceed from an intolerable principle. To which I add this consideration, that whatever effect in law and external regiment a custom may

[g] L. 'De quibus,' ff. de legib. [Digest., lib. i. tit. 3. l. 32.]

[h] [ibid.]

[i] Chap. i. rule 7. [p. 56, above.]

be admitted to have, of which I am not concerned to give accounts, yet if the custom be against law, it is certain the conscience can have no safety and no peace but in the obedience to the law. For besides that there are so many difficult and indeterminable questions in the conduct of the matter of customs, as whether the custom be reasonable, and who is to judge of that, and by what measures; what are the sufficient causes of custom, whether there must be some inequality or pressure or iniquity in the matter, or is it sufficient that the multitude is willing to introduce a custom against law? what time and continuance is required to prescribe a custom, and when it begins to be innocent, and how long it is disobedience; how many must concur to the making of it, and whether the dissent of a few does interrupt its coalition and growing into a custom, and how shall we know whether all or no do consent? or how are we sure that a greater part is sufficient, and that we have the greater part with us? whether for the abrogation of the law a mere desuetude or omission is sufficient, or must the custom be contrary to the law and matter of fact? and if that be sufficient to annul an affirmative precept, how many things and circumstances of things will be further required for the removing the obligation of a negative commandment? and very many more to the same purposes, that is, to no purposes:—besides this, I say, the conscience can never be warranted in any thing but obedience, because it is impossible to tell the precise time in which the law is actually abrogated by the custom; and therefore a man can never know by all that is before him in this affair whether he be worthy of love or hatred.

§ 8. There is only one case that can set this right and give warranty to the conscience, and that is when the prince or the supreme power allows the custom and annuls his own law; for he only that made it can give it a period: and therefore our enquiry can be only this, how we shall know when the prince is willing the law shall go for nothing. Concerning which there are but two ways of our knowing it or his doing it. The one is by tacit consent or secret approbation of the custom, as by not punishing, by not complaining, and by silence; and the other is by direct revocation. The former will be very hard to know so well as to be able to bring peace to an enquiring and curious conscience; but I shall give accounts of the best ways of knowing it in the next book, in the explication of this rule, *Qui tacet consentire videtur:* of the latter I am to speak in the next rule. In the mean time there is nothing sure for the conscience but to obey the laws, only that we can understand that the custom is then approved when it passes *in rem judicatam*, when the king's judges have given sentence in a cause against an old law for a later custom; which when they have reason to do, the prince's will is sufficiently declared; till then, if we cannot sufficiently know that the prince does secretly approve the custom against the law, we must stay till the law be expressly abrogated, and then the custom may

safely be complied with, because then we are sure it is not against law. For as Panormitan said well, *Oportet ut duæ partes sint scientes consuetudinis quæ introducitur.* Not only the people but the prince too must consent before the custom be approved. For there must be two words to this bargain.

SECT. VII.—ABROGATION.

RULE VII.

ABROGATION OF A LAW BY A COMPETENT, THAT IS, BY THE SUPREME POWER, MAY BE JUST AND REASONABLE, THOUGH THE LAW ITSELF BE NEITHER UNREASONABLE NOR UNJUST

§ 1. THE causes of abrogating a law are all those which are sufficient to make a good and wise man change his mind;—the alteration of the cause of the law, new emergencies, unfit circumstances, public dislike, a greater good: for it is no otherwise in the public than in the private will; there where a man is master of his will and ruler of his own affairs, there is nothing to be considered, but that what he does be done wisely and justly and charitably. The same power that makes the law, the same can annul it, and the same reason which introduced the law can also change it: and there is no difference but this only, that a law may not be imposed unless the matter of it be honest, or holy, or profitable; but it may be abrogated though it be all this, provided it be not necessary. For to the making of a law all the conditions are required, a competent authority, and just matter, and fitting promulgation; but to the abrogation of it, the defect of any one cause is sufficient. And therefore if the law be unjust it ceases of itself; if it be useless it falls into just neglect; if it be not published it is not born; if it be generally disliked it is supposed to be uncharitable, and therefore it is as good as if it were not born, for it will be starved at nurse. But when it is made it must continue and be maintained by all these things together; and therefore when any one fails, the whole structure descends into dissolution and a heap. But therefore if the will of the prince changes, and that he will not have it to be a law, it loses the spirit, though the body and the external causes of life remain. For though an action must not be done unless it be good and innocent, yet it is not necessary that it be done, though it be so. Every thing that is good is not necessary, and many good things are let alone, and at the same time others as good as they are done, and sometimes better:

and because there are many good provisions and counsels which are not taken, and are not made into laws, many such things which are well enough may be laid aside, either for the procuring a greater good, or for the avoiding of some appendant inconvenience. But in these cases, unless the prince be obliged by oath or promise to preserve this law, his abrogating even of a good law is no question of justice, but of prudence and charity, both which also may be preserved, if the good be changed, or improved or recompensed. But whether it be right or wrong on the prince's part, yet if the law be annulled the conscience of the subject is no longer bound. The prince cannot bind the conscience unless the law be good; but the conscience is at liberty though the abrogation be not good. Because the goodness of the matter cannot make it into a law without the prince's will, but the prince's will can alone make it cease to be.

§ 2. Upon this account it is not unseasonable to enquire, whether that a thing hath been abused may be accounted a just and a prudent cause to take it quite away.

§ 3. That it may be a just, that is, a sufficient cause, is out of all question, because it is not unjust; for then in this case it is just enough, though it be not necessary. But whether it be prudent for the prince to do it, and whether it be necessary that it be done, is another consideration. But to this the precedent of Hezekiah king of Judah[k] is a good guide. For he brake in pieces the brazen serpent, because the people made it an idol; and he did it prudently, because the people who were too apt to that crime could not easily be kept from doing it so long as that great memorial of the divine power did remain. It is like removing a beautiful woman from the greedy eyes of a young person; he cannot behold her and be safe: and thus it is in all cases, if the evil be incumbent, and not remediable, nor to be cleansed from mischief or just suspicion and actual danger, then whatsoever is so abused not only may, but ought to be removed. But if that which was abused be now quitted from the abuse, then it may be kept, if it be good for any thing: and if it were not, I suppose there would be no question about it.

§ 4. But in the change of laws, or reformation of prevailing evil customs, prudence is good always, and zeal sometimes; but certainly the contrary and the exterminating way of reformation is not always the best, because he that opposes a vice too fiercely may pass into a contrary vice as readily as into a contrary virtue. If a church happens to command some rituals and forms of worship in a superstitious manner or to superstitious purposes, or if men do observe them with a curiosity great as to the niceness of superstition, it is not good to oppose them superstitiously. If the obedient do keep the rituals as if they were the commandments of God, they are to blame: but if the disobedient will reject them as if they were of themselves against God's commandments, they are more to blame,

[k] [2 Kings xviii. 4.]

because a superstitious obedience is better than a superstitious rebellion: that hath piety and error in an evil mixture, but this hath error and impiety.

§ 5. But as to the subject matter and enquiry of the rule; that a thing hath been abused, and a law hath been made the occasion of evil, it does not make the law of itself to cease, unless that abuse and deception be not to be cured without abrogation of the law. So that if a subject sees the abuse and is offended at it, and is not tempted to comply with it, he is still tied to observe the law, and in his own practice separate it from the abuse. Thus in the primitive church the observation of vigils and wakes was a holy custom, and yet it afterwards grew into such abuse, that the ecclesiastic authority thought it fit to abrogate it; because the custom in the declining piety and corrupted manners of the world was a ready temptation to the evil. But till the vigils were taken away by authority, the laws of the church did still oblige, and did not cease of themselves: and therefore where with innocence and without active scandal they could be observed, the subject was obliged. But then this was cause enough why the rulers of churches should annul that law or custom. If they could easily have quitted those meetings from corruption, they might if they pleased retain them or annul them, as they listed; only they were bound to annul them when the evil could find no other remedy. The abuse even so long as it was curable was yet cause enough why the supreme power might abrogate the law, but not sufficient to make the abrogation necessary, nor yet for the subject to disobey it. For the inferior cannot lawfully withdraw his obedience till the superior cannot lawfully retain the law: but when to abrogate it is necessary, then to disobey it is no sin.

§ 6. I conclude these numerous enquiries and large accounts of the obligation of conscience by human laws with the apologue taken out of Nicolaus Damascenus his politics[1]. Ἰβήρων αἱ γυναῖκες . . ἔχουσι μέτρον τι τῆς ζώνης, ᾗ τὴν γαστέρα περιλαβεῖν ἂν μὴ δυνηθῶσιν αἰσχρὸν ἡγοῦνται. Laws are like the girdles of the Iberian women: 'if any man's belly or his heart is too big for those circles, he is a dissolute and a dishonoured person.'

[1] [Apud Stob. floril., tit. v. 121.]

THE END OF THE THIRD BOOK.

NON NOBIS DOMINE.

DUCTOR DUBITANTIUM.

OR,

THE RULE OF CONSCIENCE.

THE FOURTH BOOK.

OF THE NATURE AND CAUSES OF GOOD AND EVIL, THEIR LIMITS AND CIRCUMSTANCES, THEIR AGGRAVATIONS AND DIMINUTIONS.

He that intends to consider any thing fully and entirely must consider it in all the four kinds of Causes.

The FORMAL cause, or the essentiality of good and evil, is the doing it with or against conscience, true or false, right or wrong, confident or doubtful, probable or certain; and this I have explicated in the first book.

The MATERIAL cause of good and evil is derived from the object or the rule, which is the laws of God and man: by a conformity to which the action is good; and if it disagrees, it is materially evil. And this I have largely represented in the second and third books.

But because it is not enough that any thing be in its own nature honest and just, unless it be also honestly and justly done, according to that saying of the wise man[a], *Qui sanctitatem sancte custodiunt judicabuntur sancti*, 'they that keep holiness holily shall be adjudged holy;' to make up the rule of conscience complete, it is necessary that it be considered by what rules and measures a good action may be rightly conducted, and how all may be rightly judged, that we pass on to emendation, either by repentance or improvement, that a good action may not be spoiled, and an evil may not be allowed, but that, according to the words of the apostle[b] we may be εἰς πᾶν ἔργον ἀγαθὸν ἡτοιμασμένοι, 'prepared for every good work:' which will be done by considering

The EFFICIENT and the FINAL causes of all human actions; the nature and rules of which when we understand and consider, as we have the measure of human actions in all the four kinds of causes, so there will be nothing deficient to the fulness of a general or universal rule of conscience.

[a] [Wisd. vi. 10.]

[b] [2 Tim. ii. 21.]

CHAP. I.

OF THE EFFICIENT CAUSES OF ALL HUMAN ACTIONS GOOD OR EVIL.

SECT. I.—OF CHOICE AND ELECTION, VOLUNTARY AND INVOLUNTARY.

RULE I.

AN ACTION IS NEITHER GOOD NOR EVIL, UNLESS IT BE VOLUNTARY AND CHOSEN.

§ 1. THIS rule is taken from the doctrine of S. Austin[a], who makes freedom and election to be of the constitution and definition of sin. *Peccatum est voluntas retinendi vel consequendi quod justitia vetat, et unde liberum est abstinere;* the will is the mistress of all our actions, of all but such as are necessary and natural; and therefore to her it is to be imputed whatsoever is done. The action itself is good or bad by its conformity to or difformity from the rule of conscience; but the man is good or bad by the will. *Nemo nostrum tenetur ad culpam, nisi propria voluntate deflexerit,* said S. Ambrose[b]. If the actions be natural and under no command of the will, they are good by creation and the act of God; but if it be a moral action it is to be conducted by another economy. For in these it is true which the wise man[c] said, *Deus posuit hominem in manu consilii sui:* God intending to be glorified by our free obedience hath set before us good and evil: we may put our hand to which we will; only what we choose that shall be our portion: for all things of this nature He hath left us to ourselves; not to our natural strengths, but to our one choice; He hath instructed us how to choose; He hath opened to us not only the nature of things, but the events also of all actions, and invited the will with excellent amabilities and glorious objects; and by all the aids of the spirit of grace hath

[a] Lib. de duabus animabus, cap. ii. [tom. viii. col. 85 F.]; habetur 15. qu. 1. in princip. [Gratian. decret. part. 2. col. 1157.]

[b] Ibid. ubi supra, cap. 'Non est.' [col. 1164. ex lib. de Jacobo et beata vita, lib. i. cap. 3. tom. i. col. 447 D.]

[c] [Ecclus. xv. 14.]

enabled it to do its own work well. Just as nature is by physic enabled to proceed in her own work of nutriment and increase by a removing of all impediments, so does the Spirit of God in us, and to us, and for us; and after all the will is to choose by its own concreated power.

§ 2. I shall not here enter into the philosophy of this question, but consider it only as it is to be felt and handled. Let the will of man be enabled by what means it please God to choose for it, without God's grace we are sure it cannot do its work; but we are sure also that we can do our work that God requires of us, and we can let it alone: and therefore as sure as God's grace and help is necessary, so sure it is that we have that help that is necessary; for if we had not we could not be commanded to work, and there were no need of arguments or of reason, of deliberation or enquiry; according to the words of S. Austin[d], *Quis non clamet stultum esse præcepta dare ei, cui liberum non est quod præcipitur facere; et iniquum esse eum damnare, cui non fuit potestas jussa complere?* For if in human actions, that is, actions of morality, there be a fate, then there is no contingency, and then all deliberation were the greatest folly in the world; because since only one part is possible (that being impossible to come to pass which God hath inevitably decreed shall never be) the other part is but a chimæra, and therefore not subject to consultation. Add to this, if all our actions were predetermined, then one man were not better than another, and there could be no difference of rewards in heaven or earth; God might give what He please, but He shall reward none, not in any sense whatsoever; and christian princes may as well hang a true man as a thief, because this man no more breaks his law than the other, for neither of them do obey or disobey; but it is fortune that is hanged, and fortune that is advanced:

Ille crucem (sortis) pretium tulit, hic diadema[e];

and there is no such thing as virtue, no praise, and no law. But in all this there is nothing new. For these were long since the discourses of S. Austin against the Manichees, and S. Hierome against the Pelagians; and S. Leo by these very mediums confutes the Priscillianists, as appears in his nineteenth epistle to Turibius the bishop[f]. But certainly that is a strange proposition which affirms that nothing is possible but what is done; and to what purpose is repentance? no man repents that he could not speak as soon as he was born, and no man repents that he was begotten into the world by the ordinary way of all the earth. He that repents is troubled for doing what he ought not, and what he need not. But I will go on no further in this particular; not because I cannot choose, for I

[d] Lib. de fide contra Manichæos, cap. 10. [tom. viii. append. col. 26 F.]

[e] [Juv. sat., lib. xiii. 105.]

[f] [al. epist. xv. cap. 11. tom. i. col. 704. fol. Ven. 1753.]

could add very many more things, but because if a man hath not a power to will or nill, it is to no purpose to write cases of conscience, or indeed to do any thing as wise men should. A fool and a wise man differ not, a lazy man and a diligent, a good man and a bad, save only one hath a better star; they differ as a strong man and a weak: but though one be the better thing, he is not the better man. But I am not here to dispute, yet I shall observe a few things which may be useful to the question, as the question can minister to practice.

§ 3. 1) That whereas all men granting liberty of will in actions of natural life and common entercourse, many of them deny it in moral actions, and many more deny it in actions spiritual, they consider not that they evacuate and destroy the very nature and purpose of liberty and choice. For besides that the case of moral actions and spiritual is all one, for that action is moral which is done in obedience or disobedience to a law, and spiritual is no more, save only it relates to another law, to the evangelical or spiritual law of liberty, but in the nature of the thing it is the same, and can as well be chosen one as the other, when they are equally taught, and alike commanded and propounded under the same proportionable amability, and till they be so they are not equally laws;—besides this, the denying liberty in all moral things, that is, in all things of manners, in all things of obedience to the laws of God and man, and the allowing it in things under no law, is a destruction of the very nature and purpose of liberty. For the only end of liberty is to make us capable of laws, of virtue and reward, and to distinguish us from beasts by a distinct manner of approach to God, and a way of conformity to Him proper to us; and except in the matter of divine and human laws, except in the matter of virtue and vice, except in order to reward or punishment, liberty and choice were good for nothing: for to keep ourselves from harm, and poison, and enemies, a natural instinct, and lower appetites, and more brutish faculties would serve our needs as well as the needs of birds and beasts. And therefore to allow it where it is good for nothing, and to deny it where only it can be useful and reasonable and fit to be done, and given by the wise Father of all His creatures, must needs be amiss.

§ 4. 2) Liberty of choice in moral actions, that is, in all that can be good or bad, is agreeable to the whole method and purpose, the economy and design of human nature and being. For we are a creature between angel and beast, and we understand something, and are ignorant of much, and the things that are before us are mixed of good and evil, and our duty hath much good and some evil, and sin hath some good and much evil, and therefore these things are and they are not to be pursued. *Omne voluntarium est etiam involuntarium*, and there is a weight on both sides, and our propositions are probable, not true and false, but for several reasons seeming both to several persons. Now if to all this there were not

a faculty that should proportionably, and in even measures, and by a symbolical progression, tend to these things, we could not understand, we could not see, we could not admire the numbers and music and proportions of the divine wisdom in our creation in relation to this order of things. For since in our objects there is good and evil in confusion or imperfect mixture, if our faculties tending to these objects were natural, and not deliberative and elective, they must take all in, or thrust all out, and either they must receive no good or admit every evil. It is natural for every thing to love its good and to avoid its evil: now when the good and evil are simple and unmixed, or not discerned, an instinct and a natural tendency to the object is sufficient to invest it in the possession. But when they are mixed, and we are commanded to choose the good and eschew the evil, if to an indifferent object there be not an indifferent faculty, what symmetry and proportion is in this creation? If there be two amabilities propounded, and only one is to be followed and the other avoided, since the hand hath five, the soul must at least have two fingers, the one to take, the other to put away. And this is so in all species or kinds of moral actions, even that kind which we call spiritual: for with that also there is mingled so much difficulty and displeasure, that is, so much evil, so much that we naturally and reasonably desire to avoid, and the avoiding of this evil does so stand against the choosing of the other good, that a natural and unchoosing faculty can do nothing at all in the question. But upon this account God hath commanded industry, diligence, toleration, patience, longanimity, mortification; that is, He hath set before us several eligibilities in order to several ends, which must either be wholly to no purpose, or an art of vexation and instrument of torment to evil purpose, or else the means of a reward, and the way of felicity by the advantage of a free and a wise choice; and this is to very good purpose.

> Materiamque tuis tristem virtutibus imple:
> Ardua per præceps gloria vadit iter.
> Hectora quis nosset, si felix Troja fuisset?
> Publica virtutis per mala facta via est[g].

It is difficulty and the mixture of several amabilities that presupposes choice and makes virtue. But if events and actions were equally predetermined, idleness would be as good as labour, and peevishness as good as patience; but then a man could never come to God. It was well said of Eusebius, Σῶμα ἀργίη τήκει, ψυχὴν δὲ ἀμελέτησις· ἀσκήσεως τὴν αὐτὴν ἀειρούσης πρὸς τὸ θεουδέστατον. As idleness is to the body, so is carelessness and inconsideration to the soul, but exercise and difficulty and mortification bring us unto God: but these things cannot be understood but where there is liberty and election, and yet without these there is no virtue.

[g] Ovid. trist., lib. iv. el. 3. [73.]

——— Nam virtus futile nomen
Ni decus adfuerit patiendo, ubi tempora lethi
Proxima sint, pulchramque petat per vulnera laudem[1].

Difficulty makes virtue, and the contrariety of objects makes difficulty, and the various ends and amabilities make the contrariety, and liberty is the hand and fingers of the soul by which she picks and chooses, and if she gathers flowers she makes herself a garland of immortality.

§ 5. 3) All this state of things thus represented must needs signify a state much more perfect than that of beasts, but very imperfect in respect of that of angels, and of that which we ourselves expect hereafter; and therefore that liberty which is made in just proportion to fit this imperfection must also of itself needs be imperfect, and need not be envied to mankind as if it were a jewel of the celestial crown. Alas, it is an imperfection, fit to humble us, not to make us proud; it is not too much to be given us, it is a portion of our imperfect condition; it only sets us higher than a tulip, and enlarges our border beyond the folds of sheep or the oxen's stall, but it keeps us in our just station, servants to God, inferior to angels, and in possibility of becoming saints. For in moral or spiritual things liberty and indetermination is weakness, and supposes a great infirmity of our reason, and a great want of love. For if we understood all the degrees of amability in the service of God, and if we could love God as He deserves, we could not deliberate concerning His service, and we could not possibly choose or be in love with disobedience, we should have no liberty left, nothing concerning which we could deliberate; for there is no deliberation but when something is to be refused and something is to be preferred, which could not be but that we understand good but little, and love it less. For the saints and angels in heaven and God himself love good and cannot choose evil, because to do so were imperfection and infelicity; and the devils and accursed souls hate all good, without liberty and indifferency: but between these is the state of man in the days of his pilgrimage, until he comes to a confirmation in one of the opposite terms. Liberty of will is like the motion of a magnetic needle toward the north, full of trembling and uncertainty till it be fixed in the beloved point: it wavers as long as it is free, and is at rest when it can choose no more. It is humility and truth to allow to man this liberty; and therefore for this we may lay our faces in the dust, and confess that our dignity and excellence supposes misery and is imperfection, but the instrument and capacity of all duty and all virtue.

§ 6. 4) In the enquiries concerning the efficient cause of moral actions men do deny one truth for fear of losing another, and will not allow to man a liberty of choice in spiritual actions and moral effects, for fear of disparaging the grace of God; whereas it is by the

[1] Sil. Ital., lib. ix. [376. ex emend. Nicandri.]

grace of God that we have this liberty. *Ipsa ratio . . quemlibet nostrum quærentem vehementer angustat, ne sic defendamus gratiam ut liberum arbitrium auferre videamur: rursus ne liberum sic asseramus arbitrium, ut superba impietate ingrati Dei gratiæ judicemur*[k]. It is very easy to reconcile God's grace with our liberty, because by this grace it is that we have this liberty. For no man can choose what he does not know, and no man can love that which hath in it no amability. Now because we have all notices spiritual and the arguments of invitation to obedience in duties evangelical from revelation and the grace of God, therefore to this we owe the liberty of our will, that is, a power to choose spiritual things. "Grace and truth come by Jesus Christ[l]," and liberty of will comes from Him; for "if the Son makes us free, then are we free indeed[m];" but this is not by giving us new faculties, but new strengths and new instruments to these faculties we have already. But let it be this way or any other, we cannot work till we have powers to work, and we cannot choose till we have liberty, and we cannot be under a law, and promises, and threatenings, if we cannot choose: and therefore it matters not as to our present enquiry, the explication and manner of speaking of which school of learning we or any man shall please to follow: this only we are to rely upon, that the man cannot be a good man if he do not choose the good and decline the evil; and there is no such thing as conscience, and there is no need of it, and no use (except it be merely to torment us), unless it be to guide us into the choice of good, and to deter us from doing evil.

§ 7. But lastly, it will yet be sufficient to the verification of this rule, that whether we affirm or deny the liberty of the will, yet that there be in every action good or bad the action of the will; and if that be not necessary to be admitted as the cause of morality, then he that kills a man against his will is as bad as he that did it with his will, and he that receives the holy sacrament by constraint does as well as he that chooses it, and to confess Christ against our conscience is as good as if we confess Him according to it: for when the material actions are the same, there is nothing can distinguish the men that do them, but something within that can do this, or let it alone. Now because a good understanding, and a good fancy, and a great reason, and a great resolution, and a strong heart, and a

[k] S. Augustinus, lib. ii. de peccator. merit., cap. 18. [tom. x. col. 55 E.]—Vide etiam Prosper., lib. i. de vocat. gentium, cap. 8. [col. 855. ed. fol. Par. 1711.] et ad capitula Gallorum, sent. 6. [col. 209.] et contra Collatorem, cap. 11. [col. 334.] et carmen de ingratis, capp. 26, 8, et ult. [coll. 158, 87.]—Vide etiam et Fulgent., lib. de incarnat. et gratia Christi, cap. 20. [Max. bibl. vet. patr., tom. ix p. 207.] Gregorii, lib. xviii. moral., cap. 21. [al. 40. tom. i. col. 585.] et lib. xxxiii. cap. 25. [al. 21. col. 1100.] et v. Bedam, in Gen. iv. supra verba Domini ad Cain. [tom. iv. col. 58.] sed super omnes videatur S. Bernardi liber de gratia et libero arbitrio: [col. 904, sqq.] vide eundem, serm. lxxxi. in Cantica. [col. 814, 5.]

[l] [John i. 17.]

[m] [John viii. 36.]

healthful body, may be in a reprobate or vicious person, but a good will and the choice of virtue is only in a good man, it follows that all morality depends on the action of the will; and therefore that all other faculties are natural and necessary and obedient, this only is the empress, and is free, and mistress of the action.

§ 8. And yet beyond this heap of things there is another reason why a man can be good or bad only by the act of his will, and not of any other faculty, because the act of the will produces material and permanent events; it is acquisitive and effective, or recusative and destructive, otherwise than it is in any other faculties. For the other faculties are like the eye and ear, they can see or hear foul things and be never the worse, and good things and be never the better: but the will of a man is like the hand and the mouth and the belly, if they touch foul things they are defiled, and if they eat poison they die; so is the will of man, it becomes all one with its object. For it works only by love or hatred, and therefore changes by the variety of the object it entertains. He that loves a lie is a liar; but he that only understands it is never the worse. *Facti sunt abominabiles sicut ea quæ dilexerunt,* saith the prophet[n], 'they are made abominable according as they loved;' ('as the things are which they love,'—so the vulgar Latin:) and so it is in good things, ὁ κολλώμενος τῷ Κυρίῳ ἓν πνεῦμά ἐστι[o], 'he that is joined to the Lord is one spirit:' love makes the faculty like to the object, and therefore as the object of the will is whose action is love, so is the man good or bad accordingly.

§ 9. Now this is not so to be understood as if the actions of other faculties could not be sins; for a sin may be in the memory, in the fancy, in the understanding, in the eye, and in the members of the body: but then in these is only the material part of the sin; if the actions subjected in them be involuntary, they are not criminal, they may be irregular, but not sinful; only as the will commands them and they obey, so they are to stand or fall in judgment. For so ignorance is a sin when it is voluntary. *Qui dixerunt Deo, Recede a nobis; scientiam viarum tuarum nolumus*[p]; the wicked say unto God, 'We will not understand Thy ways.' So the Psalmist[q] complains, *Noluit intelligere ut bene ageret;* 'he refused understanding.' Now since in all the faculties the will of man hath a dominion, and is the cause of all moral actions, from thence they have their estimate, and are acquitted or condemned accordingly; according to that of S. Bernard, *Nihil ardet in inferno nisi propria voluntas*[r]: nothing makes fuel for the flames of hell, but the will of man, and evil actions that are voluntary and chosen.

§ 10. 1) The consequent of this discourse in order to conscience is, that no man lose his peace concerning the controverted articles

[n] [Hosea ix. 10.]
[o] [1 Cor. vi. 17.]
[p] [Job xxi. 14.]
[q] [Psalm xxxv. 3. ed. vulg.]
[r] [vid. S. Bernard. de resurrect. Dom., serm. iii. col. 174: cf. vol. v. p. 598.]

and disputes of christendom. If he enquires after truth earnestly as after things of great concernment; if he prays to God to assist, and uses those means which are in his hand and are his best for the finding it; if he be indifferent to any proposition, and loves it not for any consideration but because he thinks it true; if he will quit any interest rather than lose a truth; if he dares own what he hath found and believed; and if he loves it so much the more by how much he believes it more conducing to piety and the honour of God, he hath done what a good and a wise man should do; he needs not regard what any man threatens, nor fear God's anger when a man of another sect threatens him with damnation: for he that heartily endeavours to please God, and searches what His will is that he may obey it, certainly loves God; and nothing that loves God can perish.

§ 11. 2) It follows also from hence that no unavoidable calamity, no being born of evil parents, no being born from illegitimate embraces, no unjust sentences of men, can irreconcile us to God, or prejudice our eternal interest. God will judge us according to our works, not according to his or any man's else, or by any measures but by His own law and our obedience.

§ 12. 3) Let no man think that either God will, or that the devil can make us sin. God loves not sin, or that we should die; and therefore will not divide His own kingdom, or set up that by His effective power which by His legislative and His persuasive, and His natural and eternal, He intends to destroy. And as for the devil, he can tempt indeed, but unless we please he cannot prevail; it is our consent and willingness that makes him conqueror. And if we be really persuaded of these plain and evident truths, there is a plain way made to encourage our industry, to actuate our caution, to glorify God, to 'work out our salvation with fear and trembling[s],' to 'walk humbly with our God[t],' to devest ourselves of all excuses, to lay the burden where it ought; that is, to walk in the right way, in the way of duty and the paths of the divine commandments, without tempting ourselves, or being fooled and cozened out of our duty, or hindering our repentance and humiliation if we have done amiss.

§ 13. These are the material events, and that proper usefulness of this proposition, which can do benefit to us in the conduct of conscience. Our own will and choice is all that upon which we are to make judgment of our actions. For the further declaration of which we are to enquire into divers particulars, in order to the institution and regulating of conscience.

[s] [Phil. ii. 12.] [t] [Mic. vi. 8.]

QUESTION I.

Whether every action of our life ought to be directed by a right conscience or a well-persuaded will: or, Are not some actions not only in their whole kind, but in their circumstances and limitations also, merely indifferent?

§ 14. To this I answer, that

1) Actions, if they be considered in their physical or natural capacity, are all negatively indifferent; that is, neither good nor bad: the going into a house, the entering into a field, the striking of a blow, the act of generation, eating or drinking, as they are taken in their natural capacity, are not moral actions, that is, by all that they are in nature are nothing at all in manners: even homicide itself and adultery, in their natural capacity, differ nothing from justice and the permissions of marriage: and the giving of alms is no better naturally than giving money to Mercury or to an image.

§ 15. 2) Omissions of acts are oftentimes indifferent, even always when the omission is not of a thing commanded or morally good from some law or sufficient principle of morality, as perfection, counsel, praise and fame, worthiness and charity. The reason is, because omissions may come in upon a dead stock, and proceed from a negative principle, from sleep and forgetfulness, from a lethargy or dulness, from differing business and divertisements. And that which is nothing can produce nothing, and neither good nor evil can come from that which is not; they both must have a positive cause if they have in them any morality. Even not to commit adultery is not commendable, unless that omission be chosen. And this is very remarkable in order to conscience. For the whole duty of man consists in eschewing evil and doing good: but to will and to choose good is so necessary, and if we can, to do it is so required of us, that the very avoiding evil is exacted in that manner, that unless it be a doing good, it is a doing nothing at all, it is good for nothing, it will go for nothing. To eschew evil is a labour and a mighty work, it is a running from temptation, a shutting the doors against it, a praying against it, it is a flying from it when we can, and a resisting of it when we cannot. A porter cannot be said to eschew ambition, nor does he do well, by not commencing of a proud war, when he can think of nothing but how to fill his belly by breaking of his back; and the poor shepherd shall never be thanked for not contending for the archbishopric of Toledo, or not fighting against his prince, when nothing enters into his armoury but his bottle and his hook, and nothing into his head but that his sheep may wander in wholesome and pleasant pastures, and his lambs be free from dogs and foxes. A mere negative does nothing in God's service. The avoiding evil is neither good nor bad, unless it be by a positive act, unless the

will be in it: and indeed as things are ordered it is many times harder to decline evil than to do good; and therefore the eschewing evil is a contention and a war, it is a heap of severe actions, a state of mortification, it is a resisting of temptations. For he that was never tempted may be innocent, but he is not virtuous, and shall have no reward.

This is to be understood to be true in all cases; unless his not acting a sin, and his not being tempted now, be the effect of a long prayer and a former contention; and that either the temptation by his preceding piety be turned aside, or made impotent by mortification, or by his chosen and beloved state of life be made impossible; that is, unless by the arts of the spirit he hath made it vain, or by his frequent victories he hath made the devil flee away, and so bought his peace at the price of a mighty war, and his rest at the charge of a pertinacious labour. In all these cases the omission is negative as to the present state of things; and yet it is virtuous, because it had a positive and a virtuous cause, which now it may be lies still, because it hath produced a permanent and perpetual effect.

§ 16. And upon this account we also can hope for the reward even of those graces which we never exercise. The prince that refuses the offer of a crown or the possibilities of empire because they do not belong to him, shall certainly have a great reward, because upon the noblest account he avoids a very great evil. But the poor herdsman that dwells upon his own acre, and feeds his little yokes and couples of sheep on highways and mountains, and looks not ambitiously on his neighbour's farm, nor covets the next cottage, which yet he likes well, and thinks it excellent because it hath a chimney, nor would do an act of falsehood to get his own tenement rent free, this man shall have a reward in proportion great as that just prince who refuses to oppress his brother when his state is broken by rebellion and disadvantages. For there is no virtue but may be loved and courted, delighted in and commended in every state and circumstance of life: and though it be not exercised in noble temptations and trials proper to the most excellent and remarked persons, yet the very images and little records of trial may express a love and choice which may be equal to that which is prosperous by the greatest exercise and indication. For there are little envies and ambitions even in cottages, and therefore there may be the choice and volition of humility and peaceful thoughts and acts of charity: and there may be unchastity even in marriage; and therefore though the contention is easier, and the temptations but inconsiderable, yet they also when they are immured by their sacramental defensatives and securities may delight in chastity, and therefore rejoice in that state because it secures them from uncleanness; and therefore for this love and act of choice, even for delighting in that safety, may find a reward of chastity: and there may be covetousness amongst them that are full

of plenty, and therefore even the richest person can be employed in securing the grace of contentedness, though he have but little temptation to the contrary. Indeed if a beggar were tempted with the offer of twenty thousand pounds, the temptation would be too big for him if he understood the sum; and possibly if he be a virtuous man, and would not be tempted to tell a lie for twenty shillings, or for one of his own possible and likely sums, yet for so vast a heap of gold, bigger than his thoughts, he might be put beyond his virtue. But therefore God in His goodness to mankind does seldom permit such trials and unequal hazards, and to our not being so tempted (without disparagement to our virtue and our choice) we may well confess we owe our innocence. But because God suffers our temptations to be by accidents happening in our own condition, and we are commonly tried by that which is before us or next above us, every one can either exercise or choose the worthiness of every grace, and may hope for the reward of the whole virtue by resisting the most inconsiderable temptation to its contrary, if in case he have no bigger he equally chooses the virtue and rejoices in his innocence. And he that does resist, or by any means expedite himself from his own temptation, shall be rewarded equally to him to whom the greatest is but his next best. For our virtue is not to be estimated by the instance, but the willingness and the courage, the readiness of mind and alacrity of choice, by the proportion of the man and the methods of his labour, the resolution of the will, and the preparation of the heart; and we must account our omissions or eschewings of evil to be virtuous by what we have done against it, by our prayer and our watchfulness, our fear and caution, not by an unactive life, and a dull peace, and a negative omission: for he does not eschew evil that does not do evil, but he that will not do it.

§ 17. 3) All acts that pass without any consent of the will are indifferent; that is, they are natural, or unavoidable, or the productions of fancy, or some other unchoosing faculty, or they are the first motions of a passion, or the emotions of some exterior violence; as the sudden motion of an eye, the head or heart, the hands or feet. Now that these are as indifferent as to grow, or to yawn, to cough or to sneeze, appears because they are of the same nature, and partake equally of the same reason. But these instances can be made to differ. For those which are so natural that the whole effect also is natural, and cannot pass on to morality or be subject to a command, are always indifferent in their whole kind, and in all their degrees, and in all their circumstances. Thus to grow taller, to digest meat, to wink with the eye in the face of the sun, are not capable of morality. But those things which are at first only natural, and afterwards are nursed by the will and discourse, they are only at first indifferent, because they then only are unavoidable. To look upon a woman is no sin, if she suddenly comes into our presence, though every such look by reason of the man's weakness were a temptation:

for at first there was no time to deliberate, and therefore we could not be bound not to look, and if we had not seen her it had not been good at all nor evil. But to look upon her so long till we lust after her, to look upon her but to the entertainment of any faculty that ministers to lust, to observe that which is precious in her but so long that the will do consent to that which is or is likely to be vile, that corrupts the manners and prevaricates the law.

§ 18. 4) No action of the will is indifferent, but is either lawful or unlawful, and therefore good or bad. For although there is in many actions that which the school calls *indifferentiam secundum speciem*, 'an indifference in the kind' of action, or in respect of the object, yet when such actions come under deliberation and to be invested with circumstances, they cannot be considered at all, but that first they must be understood to be lawful or unlawful; for that very objective or specific indifference supposes the action lawful: and he that does a thing though but with that deliberation and precaution, does do well, unless there be something else also to be considered, and then it may be he does better, or it may be ill; but when it is come as far as to be chosen and considered, it must be good or bad. For whatsoever that is about which we deliberate, we do it for a reason that to us cannot seem indifferent; it is for an innocent and a good end, for good to ourselves or others: and nothing can come under the consideration of being an end of human actions, but is directed by the words or by the reason, by the design or the proportion of some law. For even our profit or our pleasure are to be conducted by the measures of the spirit: and there is nothing else besides profit and pleasure that is good, or can become the end of an action, excepting only what is honest: and therefore every thing that is good or can be the reason of an action is under a law, and consequently cannot be indifferent, according to the doctrine of S. Austin[u], *Quanquam voluntas mirum si potest in medio quodam ita consistere, ut nec bona nec mala sit: aut enim justitiam diligimus, et bona est, et si magis diligimus, magis bona, si minus, minus bona; aut si omnino non diligimus, non bona est. Quis vero dubitet dicere voluntatem nullo modo justitiam diligentem non modo esse malam, sed pessimam voluntatem? Ergo voluntas aut bona est aut mala, &c.* Whatsoever we do, we do it for a good end or an evil; for if we do it for no end, we do not work like men: and according as the reason is which moves the action so is the will, either good or bad: for though virtue oftentimes is in the midst between two evils, yet the will of man is never so in the middle as to be between good and evil; for every thing that can move the will is good, or it seems so, and accordingly so is the will.

§ 19. Indeed every action we do is not in an immediate order to eternal blessing or infelicity; but yet mediately and by consequence

[u] De peccator. merit. et remiss., lib. ii. cap. 18. [tom. x. col. 56 B.]

and in the whole disposition of affairs it adds great moments to it. *Bonum est continentia, malum est luxuria; inter utrumque indifferens, ambulare, capitis naribus purgamenta projicere, sputis rheumata jacere; hoc nec bonum, nec malum est: sive enim feceris, sive non, nec justitiam habebis nec injustitiam,* said S. Hierome[x]: 'continence is good, and luxury is evil; but between these it is indifferent to walk, to blow the nose, to spit: these things are neither good nor bad, for whether you do them or do them not, you are by them neither just nor unjust.' For besides that S. Hierome instances in things of a specific and objective indifference, of which I have already spoken, that which he says is true in respect of the supernatural end of man, to which these things (concerning which oftentimes we do not deliberate at all, and even then when we do deliberate, they) operate but little. But because the instances are in natural things, where the will hath very little to do, we shall best understand this proposition by the instance of S. Gregory[y]; *Nonnulli diligunt proximos, sed per affectum cognationis et carnis, quibus tamen in hac dilectione sacra eloquia non contradicunt.* Our natural love to our kindred is a thing so indifferent, not in its own nature, but of so little concern to eternity if it be only upon the stock of nature, that all that can be said of it is that the scriptures do not forbid it. That is, whatsoever is natural is not considerable in morality. But because this which first enters by nature is commanded by God, and can be confirmed and improved by the will, therefore it can become spiritual: but 'that which is natural is first, and then that which is spiritual:' so that although at the first and when it is only the product of nature, it is but a disposition and a facility towards a spiritual or moral duty; yet as soon as ever the will handles it, it puts on its upper garment of morality, and may come to be invested with a robe of glory. And this was very well discoursed of by the author of the Ὑπογνωστικὰ in S. Austin[z]; *Esse fatemus liberum arbitrium omnibus hominibus, habens quidem judicium rationis, non per quod sit idoneum quæ ad Deum pertinent sine Deo aut inchoare, aut certe peragere, sed tantum in operibus vitæ præsentis, tam bonis quam etiam malis: bonis dico quæ de bono naturæ oriuntur, id est, velle laborare in agro, velle manducare et bibere;* 'in things pertaining to God we cannot begin, or at least we cannot finish anything without God and His grace: but in the things of this life we have a free choice, whether the things be good or evil. For those I call good which do natural good, as to be willing to work in the field, to will to eat or to drink. Now even these things are always good or bad when they are once chosen by the will, and to these very things the divine grace does give assistance. So the same author[a], *Velle quicquid bonum ad præsentem*

[x] Epist. xi. ad Augustin. [inter epist. August., Ben. lxxv. tom. ii. col 176 C.]

[y] Homil. in Evang. xxvii. [tom. i. col. 1560 C.]

[z] Tom. vii. lib. iii. [cap. 4. Ben. tom. x. append. col. 14 C.]

[a] [Ibid.]

pertinet vitam, non sine divino gubernaculo subsistunt, 'a man cannot choose well, even in things belonging to this life, without the divine assistance.' And therefore in things of great concernment we pray to God to conduct and direct our choice. And since the order and perfection of every creature is to do actions agreeable to the end and perfection of his nature, it is a pursuance of the end of God and of his own felicity. Although to do so is not virtue in beasts, because they are directed by an external principle, and themselves choose it not; yet in men it is virtue, and it is obedience: and although it is natural to do so, and it is unnatural to do otherwise; yet because it is also chosen in many instances, in them it is a virtue or a vice respectively: and though it be no eminent virtue to do so, yet it is a prodigious sin to do otherwise; for sins against nature are ordinarily and in most instances the worst; which does demonstrate, that even things of nature and the actions of our prime appetites, when they can be considered and chosen, never can be indifferent; and for other things which are not of nature there is less question. Thus to walk, to eat, to drink, to rest, to take physic for the procuring health, or the ease of our labours, or any end of charity to ourselves or others, to talk, to tell stories, or any other thing that is good or can minister good to nature or society, is good, not only naturally, but morally, and may also be spiritually so; for it being a duty to God to preserve ourselves, and against a commandment to destroy ourselves; it being a duty to be affable and courteous in our deportment, to be gentle and kind and charitable; it being charity to make our own lives and the lives of others pleasant, and their condition not only tolerable but eligible; there is no peradventure but every thing of our lives can be good or bad, because if it can minister to good or evil ends, it can be chosen for those ends, and therefore must partake of good or evil accordingly. How these ends are to be considered, and with what intention and actual or habitual intuition, I am afterwards to consider; for the present it suffices that upon this account the actions themselves are not indifferent.

§ 20. And this doctrine is to great and severe purposes taught by our blessed Saviour, "Of every idle word that a man shall speak he shall give account in that day[b]." It was a known saying among the Jews, *Cavebit vir ne cum uxore loquatur turpia, quia etiam propter sermonem levem viri cum uxore adducetur ille in judicium,* said Rabbi Jonah[c]; 'even the looseness of a man's talk with his wife shall be brought into judgment:' and Maimonides[d] said, *Pleraque verba sunt otiosa et causam præbent iniquitatis,* 'most words are such which some way or other minister to iniquity,' and therefore shall certainly pass the fiery trial. Πᾶν ῥῆμα πονηρὸν, so it is in some Greek copies, 'every wicked word:' for an idle word is not indifferent; it

[b] [Matt. xii. 36.]

[c] In libr. Timoris. [R. Jonah Gerundensis; vid. Bartol. bibl. Rabb., tom. iii. p. 787.]

[d] [Teste Drusio ad loc. inter Critic. sacr.]

may have in it some degree of wickedness, and therefore may be fit to be forbidden, and consequently shall be judged. *Otiosum verbum est quod sine utilitate et loquentis dicitur et audientis, si omissis seriis de rebus frivolis loquamur, et fabulas narremus antiquas. Cæterum qui scurrilia replicat, et cachinnis ora dissolvit, et aliquid profert turpitudinis, hic non otiosi verbi, sed criminosi tenebitur reus,* said S. Hierome[e]; 'that which neither profits him that speaks nor him that hears is an idle word; any thing that is not serious, but frivolous and like an old tale.' But if it be dissolute or wanton, it is not idle but criminal. S. Chrysostom[f] expounds the words to the same purpose, calling that an idle word which is spoken without just inducement in some kind or order of good things, and that which is mixed with lying or slander. *Omne verbum quod non conducit ad propositam in Domino utilitatem vanum et otiosum est,* said S. Basil[g]; 'that word which is not for edification, that is, that which does no good at all, must needs be evil:' nay further yet, *Verbum otiosum est quod, etiamsi bonum sit, ad ædificationem fidei tamen non aptatur: et si ejusmodi verba in celeberrimo illo totius orbis conventu examinabuntur, quid scurrilibus, et detrahentibus, et obscœnis verbis fiet?* 'that is an idle word, which although it be good, yet does not tend to the edification of faith: and if such words as these shall be examined in the great assembly of all mankind, what shall be done to detracting, scurrilous and lascivious talkings?' I suppose S. Basil's meaning is that all those propositions which being built upon the foundation are not fit for the promotion of it, they are not silver or gold, but a superstructure of wood or hay or stubble: even these and those shall be examined in the eternal scrutiny; nothing shall escape there; if it will not endure the fire it shall be consumed. For if the action here have any material end, it shall hereafter have a material reward: if it have no end, yet the man that did it was sent hither to a better end than to do foolish and useless things. The very doing or speaking that which is good for nothing is evil, and shall be discerned and judged. We see it even in the judgments of men. Martial[h] tells of a good man that had got a trick to invite his friends to walk, to bathe, to eat, to drink with him, and in all his enterviews he would be perpetually reading of his verses: one would have thought the thing itself were innocent, if the question had been asked concerning the thing alone; but they that felt the folly and the tediousness of it were afraid to see him.

Vir probus, justus, innocens timeris.

And Sidonius[i] tells of some idle persons, *quos exsecrabilis popularitas agit; civium maximos manu prensant, eque consessu publico abducunt,*

[e] In comment. ad hunc locum. [tom. iv. part. 1. col. 50.]

[f] [In loc. hom. xlii. tom. vii. p. 453 C.]

[g] In regul. brevior. resp. ad interr. xxiii. [tom. ii. p. 423 A.]

[h] [lib. iii. epigr. 44.]

[i] Epist. 20. lib. v. [p. 153. 4to. Par. 1652.]

ac sequestratis osculà impingunt, operam suam spondent, sed non petiti. Utque videantur in negotii communis assertione legari, evectionem refundunt, ipsosque sumptus ultro recusant, et ab ambitu clam rogant singulos, ut ab omnibus palam rogentur, &c., their very civility is troublesome, their idleness is hugely busy, and their employment signifies nothing.

> ——— Ardelionum natio,
> Occupata in otio,
> Gratis anhelans, multa agendo nihil agens,
> Sibi molesta et aliis odiosissima[k].

They do nothing, yet never stand still, and are very troublesome to themselves and others. Such an idleness as this, whether in words or deeds, if it can be considered and observed here, shall not escape a stricter consideration hereafter. For none of these things in the event of affairs shall prove to be indifferent.

§ 21. The effect of this question is very great; for 1) it engages us upon a strict watchfulness over all our words and actions, and to a wise enquiry when they are done, and scatters that incuriousness and inadvertency of spirit which seizes upon most men while they do actions which they consider not whether they be right or wrong, and supposing actions, many more than they are, to be in their whole kind indifferent, would fain make them so in their individual, and by never disputing the particulars, detain the action in a neutrality as to the conscience, never representing it either as lawful or unlawful, much less as good and evil. But our actions shall be judged by God's measures, not by our wilful and ignorant mistakes. 2) Every thing we do must twice pass through the conscience; once when it is to be done, and again when it is done: and not only 'whatsoever is not of faith is sin,' so that we sin if we are not persuaded it is lawful; but it becomes a sin when we are careless and consider not at all, either actually or habitually, either openly or by involution, as it is alone or as it is in conjunction with something else, by direct intuition or consequent deduction, by express notices or by reasonable presumptions, by rule or by fame, by our own reason or by the reason of others whom we may fairly trust.

QUESTION II.

§ 22. Whether is it necessary for the doing of good that we have an express act of volition, or is it not sufficient in some cases that we are not unwilling? Is it not enough that we do not oppose it, but must we also promote it? That is, although actions of themselves be not indifferent when they are chosen, may not the will be allowed to be indifferent to some good things that are laid before her? and what kind or degrees of indifference to good can be lawful, and in what cases?

[k] Phædr. fab., lib. ii. [fab. 5.]

§ 23. This is not a question of single actions principally, but of states of life and being, and of single actions only by consequence and involution in the whole: but of great usefulness in the conduct of conscience and making judgments concerning the state of our souls; and it is a great endearment of the actions, the zeal and forwardnesses of the will and an active piety. First therefore in general I answer, then more particularly.

§ 24. In the law of Moses the righteousness commanded was a design for innocence, their great religion was rest, their decalogue was a system especially of negative commandments, the sanction of the law was fear and terror, which affrights all men, but invites none, it makes them afraid, but never willing; their offices were purifications and cleansings away: but so little of good was to be done, that God was more careful that the people should not commit idolatry than severe in calling them to admire His beauties; that they should learn no evil than that they should learn much good. Now to this negative state of duty, a will doing nothing, an understanding not considering, a forgetfulness of the question, and a sitting still might in many cases minister; and then the will is accidentally indifferent, when the action never stands before it, either as good or evil. But now under the gospel we are unclean unless we have active purities, and we are covetous unless we despise the world, and we are malicious by interpretation of law, unless we take what opportunities we have of doing good to them that have used us ill; and even to be lukewarm is abominable to God, and our tongues may sin with silence, and we are to keep holy days not by rest, but by religious labour, and we dishonour the holy name of God, not only by cursed swearing, and false oaths, and evil covenants, but if we do not do Him honour; if we do not advance His kingdom we are rebels, if we do not set His glory forward we have profaned His holy name that is called upon us.

§ 25. And this is with some mysteriousness intimated in the several senses of those words of scripture[l], "Therefore let My name be called upon them." So Jacob's name was called upon Rebeccah, and Uriah's name upon Bathsheba; *Rebecca Jacobi*, and *Uriæ Bathsheba:* and upon Ephraim and Manasseh when Jacob's name was called, the purpose was that they should be reckoned not as if they had been sons of Joseph, but the sons of Jacob, having an equal portion in the divisions of Israel. So in the prophet[m], "Only let Thy name be called upon us," that is, let us be reckoned in Thy portion, accounted "to be Thy people, Thou our Father," and we "sons and daughters unto God." Now in these instances of the Old testament it signifies honour and privilege, security of title and advantage of relation, something that on their part was passive all the way. But in the New testament we find the same expression

[l] [Gen. xlviii. 16.]

[m] [Isa. iv. 1.]

rendered to such purposes as will signify something on our parts also, some emanation of our will and choice, even an active duty. Βλασφημοῦσι τὸ καλὸν ὄνομα τὸ ἐπικληθὲν ἐφ' ὑμᾶς[n], 'they blaspheme that holy name which is invocated upon you,' that is, they blaspheme the name of Jesus Christ which was put upon them in baptism by invocation and solemn sacramental prayer. The name of Christ was then put upon us in that manner which teaches us how to wear it for ever after: it was called upon and so put upon us; it must be called upon, and so worn by us. Here is invocation relative to two terms, both active and passive. And since it is evident and clear in the scriptures of the New testament that 'calling on the name of the Lord' is used for being 'disciples' and 'servants of the Lord,' as appears in those words[o], "Whosoever shall call on the name of the Lord shall be saved," that is, all that have given up their names to Christ, all that have taken His name and live accordingly; it follows that all we who bear the name of Christians must not be content with the glorious appellation or the excellency of the relation, but we must by our holy lives, by our active obedience, by an operative faith, and a busy love, do honour to Christ, and glorify that name by which we are called and made illustrious.

§ 26. And this is rarely well taught us by a proverbial saying used by our blessed Lord[p], "He that is not with us is against us; and he that gathereth not scattereth abroad:" that is, it is not enough that our will do not choose evil, or oppose itself against God and His holy laws and sermons. For many unconverted gentiles, children and strangers, the lukewarm and the indifferent, the deaf and the dumb, the stones of the street and the gold of the temple, the starers and the talkers, the sceptic and the careless, these have a negative indifference of will: they do not take part against Christ, but neither do they fight of His side, and therefore are not *populus voluntarius*, their will and choice is not on Christ's side. But the particulars are these, which determine the cases of conscience which can arise from this enquiry.

§ 27. There are in the gospels two proverbial sayings, each of them twice used: "He that is not with us is against us," and, "He that is not against us is with us[q]." The sayings are of contrary purpose and effect. For as the first enjoins us to the labour of love, and an active will, and an effective zeal, and a religion productive of permanent effects; so the latter seems to be content with negative measures, to approve of an indifferent will, to allow a neutrality, and that not only many single actions, but that a whole state of life may have a negative indifference and indetermination. Now because both the propositions must needs be true, they must have distinct measures and proper significations; therefore

[n] [James ii. 7.]
[o] [Acts ii. 21; Rom. x. 13.]
[p] [Matt. xii. 30; Luke xi. 23.]
[q] [Mark ix. 40; Luke ix. 50.]

§ 28. 1) When Christ said, "He that is not against us is with us," He meant it principally of strangers and aliens, persons not admitted into the strictures of the covenant evangelical. For when the princes of the nations conspire against the Lord's Christ, he that refuses to join with them declares that he will not be Christ's enemy; and

Est quiddam prodire tenus[r],

this little is more than nothing. Thus Gamaliel was on Christ's side when He gave a gentle counsel in a case of the apostles, with whom although he did not join, yet because he would not join against them, he was so far with them that he was not esteemed an enemy: and it was noted of Joseph of Arimathea, that he was not consenting to the sentence of the high priests in putting our blessed Lord to death, and therefore he was a good man. His not doing that evil was a great indication of a friendly mind.

§ 29. 2) This is also true in questions of religion of difficult understanding, and less necessary knowledge, or not of immediate concernment to salvation. He that does not disbelieve the miracles of Christ, he that does not stop his ears against the voice of Christ, he that does not run after a stranger's voice, 'is not far from the kingdom of heaven:' though the man knows little, yet if he believes nothing against any word of Christ, though many words of Christ were delivered of which he knows nothing, he hath put his head into the folds of Christ. For in articles of belief which are not of the foundation, an implicit belief in God and His Christ is sufficient, when there is no vicious positive cause of the not knowing them explicitly: and if this were not true, ignorant and unlettered persons were tied to as great learning and explicit knowledge as the profoundest clerks; which because it is nowhere commanded, and is very often impossible, and always unreasonable to be exacted, it must follow that it will in most cases be enough for the idiot or unlearned that they do not oppose what they do not understand, but humbly submit themselves to God and their superiors, by a confident confession of what they understand, and a modest conformity to those other articles in which public peace is more concerned than public truth, or their private duty. In this case a negative indifference of the will by reason of the ignorance of the understanding, that is, a not opposing what they understand not and cannot understand, is their security and their innocence.

§ 30. 3) He that is not against Christ is with Him, is true in the preparations and dispositions to conversion. For he that makes use of a little grace shall have more; and he that well uses the laws of his country, and keeps the justice of his nation, and observes the principles of reason, and walks according to the light he hath, though he hath not the broad noon-day of the gospel, yet he is so far on Christ's side, that Christ will join Himself to his, and draw him

[r] [Est quodam prodire tenus,—Hor., lib. i. epist. 1. 33.]

nearer, and advance his nature, and promote his excellent dispositions, and by the methods of the Spirit bring him to God. Upon this stock it was that God sent S. Peter to Cornelius, and that so many of the Jewish proselytes were converted to christianity, and so many wise heathens, who had just and ingenuous souls and lived good lives, were brought into the schools of Christ.

§ 31. 4) This is true also in the habits or actions of any one virtue when it is alone, or when it comes in upon the stock of nature, or education, or passion, or human laws. He that does one good act for Christ, though he does no more, by that one action declares himself to be no enemy, and therefore he shall not lose his reward; though he give but a 'cup of cold water' to a thirsty disciple, in that capacity of his being a disciple; nay, if it be but in the consideration of his being thirsty, if it be but by a natural pity and tenderness, by the emotions of humanity, by the meltings of a worthy disposition and of tender bowels: and therefore much more shall every worthy habit, though it be alone, though entering from a less perfect principle than a spiritual and christian grace. The chastity of Lucretia, the honesty of Decianus, the truth of Rutilius, the bravery of Scævola, the repentance of Ahab, the humiliation of Manasses, the zeal of Jehu, the compassion of Titus over Jerusalem, these things and these persons are considered by God, and have their portion of reward. And he is not wholly against Christ that does any thing for Him: for our blessed Lord is so gracious, that no man shall speak a word for Him, or relieve any of His servants, or keep a memorial, but as far as that action goes, according to the proportion of the choice and the good will, Christ will reckon him to be on His side, and allot him a portion of His blessing, a younger brother's part, though not the inheritance.

§ 32. 5) This is true of those who being secretly convinced cannot yet shake off their prejudices, and their pitiable fears, who own Christ in their hearts, whose faith is weak and their doubts are strong, who fear God heartily, and yet cannot quite shake off the fear of men; they also are reckoned on Christ's side so far, that they are not present and actual enemies, but actual friends, and but potential professors and disciples. Thus Nicodemus was on Christ's side by not being against Him. He owned as much as he durst; he spake in behalf of Christ, but professed Him not; he believed in Him, but feared the Jews. This was not enough to adopt him into the kingdom, but this brought him from the enemy's side, like the Kenites and the sons of Rechab in the land of Israel.

§ 33. 6) To be with Christ hath many parts and degrees of progression and avail. Every man that professes Christ is with Him; he that is baptized, he that is called christian, he that delights in the name, he that is in the external communion of the church, is in some sense with Christ, because he is not against Him. For whoever is a member of the church, whosoever retains his baptismal right, he

that hath not renounced christianity, lost his faith, defied Christ, or turned apostate, he is still within the covenant of mercy, within the limits of grace and the power of the Spirit; that is, he hath a right to the privilege and grace of being admitted to repentance and the consequent grace of pardon: for baptism is for the remission of sins, and as long as that is not renounced we have a perpetual title to remission of sins, the sacrament as to this purpose being of perpetual effect. Every such person is yet a member of Christ, though barren and unfruitful: his leaf doth not prosper and his fruit springs not, yet there is a root remaining. For thus the gospel is compared to a net with fishes good and bad, to a field of corn and tares. For no man is thrown from grace and mercy but the open, professed, irreconcilable enemies of Christ, voluntary and malicious apostates; for they are cut off from the root, and have no portion in it, as S. Paul largely discourses in the sixth and tenth chapters to the Hebrews. But those who sin against Christ, and dishonour and grieve the holy Spirit of Christ, who sin and repent and yet sin and repent again, being always sorrowful, and always have cause; these men have hopes, and time, and helps, and arguments, and probabilities of life, which they could not have but by being members of Christ's mystical body. They are with Christ in covenant and desire, in title and adoption, because they are not against Him in profession and voluntary hostility: but they must go further, or they die.

§ 34. For all this effects nothing else, but that we are tied to treat such persons not as enemies but as brethren; it exposes such to be chastised and guided by the rod of ecclesiastical discipline, but not to be cut off by the sword of excision and *anathema*, and sentences of despair; it does manifest the goodness of God, the glorious mercies of our Redeemer, His aptness to pardon, His readiness to receive us, His desires to have us saved, His passion for our felicity, and the presence of His preventing and auxiliary grace. But this was but the proverb of strangers and beginners, of infants and babes in Christ.

§ 35. 7) But when we are entered into the covenant of grace, when we have declared, when the question is concerning final pardon and the hopes of glory, then the other proverb is only true. It is not enough that we are not against Christ, but we must be with Him and for Him, earnest and zealous, passionate and obedient, diligent and true, industrious and inquisitive; then it is, 'He that is not with Christ is against Him.' For it is not enough that we are in the root; that is, in preparation and disposition; but we must also bear fruit in the root; for so saith our blessed Saviour[s], "I am the vine; My Father is the husbandman: every branch in Me that beareth not fruit shall be cut off." First they are in Christ as in the vine before they can bear fruit; and there He suffers them to be in expectation of fruit; of which if they fail in their season, they shall be cut

[s] [John xv. 1, 2.]

off. For the case between Christ and the world is as it was between Cæsar and Pompey. Pompey had the possession and the right; and therefore, as Cicero in his oration *pro Ligario*[t] affirms, Pompey's party acknowledged none but his certain and professed friends: *adversarios autem putare nisi qui nobiscum essent,* and all to be against them that were not with them: *Te autem,* saith he to Cæsar, *qui contra te non essent, tuos.* For Cæsar was but entering upon his new fortune, and all that he could get to himself, and all that would not assist his enemy, were his purchase or security. So it is with Christ in the beginnings of our conversion; it is a degree of victory to arrest our thoughts, and our not consentings to the world and its fond affections is an approach and an accession to Christ. But when our Lord hath gotten the first victories, when He hath acquired possession as well as right to a soul, and hath a title to rule alone, then the proposition is changed. Christ will not be satisfied with neutrality and an indifferent undetermined will, but He will have our love and active choice, and He will be honoured by all our services: and then the christian philosophy relies upon these principles: 'He that does not love God is His enemy;' 'Not to go forward is to go backward;' not to do good is a doing evil, and lukewarmness is an evil state; and we must not only not 'resist the word of truth,' but 'we must contend earnestly for it;' and 'we must confess with our mouth what we believe with the heart;' to be Christian is to hurt no man, and to do good to every man; and we must not only proceed when we are not hindered, but we must take care that we be not hindered, we must remove every impediment, and pare away that which is useless; for *obstat quicquid non adjuvat*[u], if it does no good it does hurt: and when the talent is entrusted to us it must not only not be spent riotously, but it must not be laid up in a napkin. *Pensemus quod lucrum Deo fecimus nos qui accepto talento ab eo ad negotium missi sumus*[x]: 'unless we gain, and put something to God's heap, we are unprofitable servants.'

§ 36. By the proportion of this truth in the state of our life, we are to account concerning our single actions; not that every single action must be effective of a real, discernible event of piety, but that it be fitted to the general design of a Christian's life; nothing of evil, but ministering to good some way or other, or at least in some good order of things; good for edification, or good in charitable society, or good for example, or useful to some purpose that is fit to be designed, and fit to be chosen.

[t] [cap. 11.]
[u] Quintil. inst. orat., lib. viii. cap. 6. [§ 61.]
[x] S. Greg., homil. vii. in evang. [tom. i. col. 1504 C.]

RULE II.

THE VIRTUAL AND INTERPRETATIVE CONSENT OF THE WILL IS IMPUTED TO GOOD OR EVIL.

§ 1. THIS rule is intended to explicate the nature of social crimes, in which a man's will is deeper than his hand, though the action of the will is often indirect and collateral, consequent or distant; but if by any means it hath a portion into the effect, it is entire in the guilt. And this happens many ways.

§ 2. By Ratihabition and Confirmation.

In maleficio ratihabitio mandato comparatur, saith the law[y]: to command another to do violence is imputed to him that commands it more than him that does it. So Ulpian interpreting the interdict *Unde tu illum vi dejecisti,* affirms *eum quoque dejicere qui alteri mandavit vel jussit:* and therefore Ptolemy was guilty of the blood of Pompey when he sent Pothinus to kill him,

Hic factum domino præstitit[z]. . . . .

Now because ratihabition is by presumption of law esteemed as a commandment, therefore Ulpian[a] affirms of both alike, *Dejicit et qui mandat, et dejicit qui ratum habet.* He that commands, and he that consents after it is done, are equally responsible. Now though the law particularly affirms this only *in maleficio,* in criminal and injurious actions, yet in the edition of Haloander that clause is not inserted; and it is also certain that it holds and is true in contracts and civil affairs. Thus what a servant or a son employed by his father or his master shall contract for, is the father's act if he accounts it valid. If the son borrows money in the father's name the father is the debtor. But in matters criminal and civil there is a real difference as to this particular.

§ 3. For in matters Criminal ratihabition or approving of the act does always make the approver guilty. The Jews crucified their Lord and king: he that says it was well done, is guilty of that intolerable murder, and for an ineffective malice and spite procures to himself a real and effective damnation. But in actions criminal there is this difference to be observed. 1) Some actions are done by the lust and appetite of the criminal agent only, as adultery, rape, fornication; and if this be the state of that affair, that sin is wholly imputed to him that acted it, not to him that approves it. He that approves it is indeed guilty of the same kind of sin, because he hath applied his will to that which God forbids, and for his lust-

[y] ff. de reg. jur., l. 152. [Digest. lib. l. tit. 17.]

[z] [Mart., lib. iii. epigr. 66.]

[a] [ubi supra.]

ful disposition approved and consented to by his will commits a sin like it, but is not guilty of that. 2) But if such approbation become an encouragement to the criminal to do so again, if it fortifies his heart in sin, or hardens his forehead, or makes it pleasant, he that approved the first is not only guilty of a sin like the first, but partakes with the criminal really in the guilt of the sins that follow upon that account. 3) But there are other sins which are, as the law speaks, *ratihabentis nomine gesta,* which are done in another's name, and either partly or wholly for his interest; and therefore if by him they be approved, the ratihabition is valid to all evil purposes, and is therefore all one as if the actions were by him commanded for whose interest they were acted, and by whose will they are approved. And thus it is also in the former sins which serve the lust of him that acts them, if besides the serving of his lust they are designed to serve another's interest; as if Titius steal Sempronia and run away with her, or lie with Mævia the daughter of Amilius to do a spite to the father for the injury he did to Tubero, not only Titius but Tubero is guilty of the crime, if Tubero approves what Titius did for his sake.

§ 4. But now if it be enquired what real event as to conscience this nice distinction without greater difference can have, that in one case he that approves the sin is not guilty of the same but another like it, and in the other cases he is partner of the same fault; I answer, first, in human laws the difference of effect is very great. For to approve an act of sin done not in my name introduces no punishment upon the approver; but if it be done in my name and for my interest, by a fiction or presumption of law, it is supposed I gave command or warranty, and therefore I also shall partake of the punishment, unless by the consideration of other circumstances I be relieved in equity, and the presumption be found to fail. But in the court of conscience the difference depends not upon presumption, but upon what it is in the truth of the thing, which shall be judged well enough by him that knows the secret. For whether the crime was done for me or not, I shall be judged according to that influence which I would have upon the effect. If I willed it directly and caused it to be done knowingly, or by some causality which I at any time used to that purpose, I am liable to all the evil that can be consequent to that sin: but if I be guilty only by ratihabition, that is, if really I did not command it, or effect it, or cause it to be effected, but only rejoice in it and use it when it is done, then my ratihabition is ordinarily (though very evil) yet much less than the other's action. I say ordinarily, that is in all cases where craft and machination, plots and contrivances, intermedial violences and deceivings, and other evil things of the retinue of the sin are previous to the crime. For in all these things he that only approves the act hath commonly no interest, or care, or notice, or consideration. If it happens that he considers and approves them too, then the case is altered: but it is not al-

ways so. This case will explicate the rule. Ventidius was married to Romanella; but growing rich, and being made a Roman knight, grows weary of his first bed-fellow, because he hopes now to get a richer wife if she were gone. While he tumbled this often in his head, it happened that a slave of Ventidius upon some trifling occasion, but in a great passion, flings something at Romanella, which caused her to miscarry, and to die. Ventidius observing his good fortune, secretly puts away his servant that he may escape the hand of justice, and promises him liberty, making what pretences he found convenient to his purpose. He went presently to get him a new wife, but was arrested in his design, because he was told that he that was guilty of his wife's death was to lose the privilege of a second marriage; but because he confirmed it and rejoiced in it, it was esteemed in law as a commandment. Upon this he takes advice, and was told, that though in conscience he was guilty of murder, because he delighted in and approved it, yet mere ratihabition in such things which must be judged not by the effect but by the previous machination and design, did not produce that punishment of impeding his future marriage. And there is reason for it; because though Ventidius was so base as to wish his wife dead or killed, yet he would not do it himself, nor procure it to be done; his covetousness had not prevailed so far with him; and therefore neither ought the punishment to go to the extremity of the law. Secondly, in divine laws and in the direct obligation of conscience there is this great difference. If a crime be done in my name, and I approve it, I am not only guilty before God of the crime, and liable to an equal share of the punishment (according to the foregoing measure), but I contract a new necessity of duty; I am bound to restore the man that sinned for my interest to his former state of justice and integrity as far as I can, by disallowing the act, by discountenancing it, by professing my own repentance, by inviting him to the like: which obligation is not at all upon me by a simple and mere ratihabition of an act in which I have no interest, and to which I had no previous concourse, directly, nor by interpretation. This is the state of this question in relation to matters criminal.

§ 5. But in matters Civil, as in contracts, debts, pledges, provisions for pupils, the law is to determine the whole affair, and to account the ratihabition at what rate she please, and upon what conditions; and therefore we are to be determined by our own laws in all such enquiries. That which can be a general measure and relates any way to conscience is this; where the law does require an express command *pro forma*, the after-ratification is of no effect in law, nor conscience, if the law impedes the effect. Thus if a minor makes a contract without the consent of his guardian, though afterward the guardian allow it, the contract is invalid: because the law required in the very form and solemnity of the contract that the authority of the guardian should be interposed; and *ea quæ pertinent ad solenni-*

tatem contractus, a contractu dividi non possunt, say the lawyers; and *ubi forma actus deficit, corruit actus, l.* '*Julianus,*' 9. § '*Si quis,*' *ff. ad exhib.*[b] If there be an essential defect of what is by law required to the validity of the act, the act is null and invalid, and therefore is also invalid and effects nothing in conscience, unless where the law of nature intervenes; of which I have already given accounts[c]. Thus also it is in punishments which are not to be incurred but in cases named in the law, and therefore are not to be imposed in cases of presumption or fiction of law, amongst which is this, of the equivalence of ratihabition to a command[d]. If the son marries a widow within the year of mourning he is legally infamous; but so is not the father, though he approves it, unless he did consent in the beginning; because these effects being wholly depending upon positive laws, can have no other measures but what the laws put upon them. But in the court of conscience the matter is not so easy.

§ 6. But since ratihabition is at the worst but an interpretative command, and yet is so very bad as to imprint the guilt of the whole action upon him that so hath influence into the effect by interpretation, it must needs be that a direct command is more evidently criminal, and in greater degrees; which I needed not to have observed but in order to a further enquiry, and that is,

QUESTION.

Upon whom doth the greater portion of the guilt lie; upon him that commands a sin, or him that sins in obedience?

Although the question of degrees may here be useful to some purposes of conscience, yet it is just to condemn them both with a downright sentence. For so the wise ape in Æsop[e] judged the question between the wolf and the fox about a piece of flesh which the fox had stolen from the village, and the wolf had stolen from the fox, who now complained of the wrong. The judicious ape answered,

Tu non videris perdidisse quod petis:
Te credo subripuisse quod pulchre negas.

The fox says he hath lost it, but he lies; and the wolf says he hath not stolen it, and he lies too. They were both in the wrong, and it was hard to say which was the worse. But because although they were equally wicked in their nature and their manners, yet in this cause there might be some difference, and in the partners and con-

[b] [Digest., lib. x. tit. 4.]
[c] Lib. ii. chap. 1. rule 5. [vol. ix. p. 318.]
[d] Vide Petrum Peckium ad c. 10. 'Ratihabitionem,' de regul. jur. in 6to. [opp. p. 54 sqq. fol. Antv. 1666.]
[e] Phædr., fab. 10. [lib. i.]

federates in a crime some have more causality than others, though both of them are in a sad condemnation; therefore

§ 7. To this I answer by a distinction known in the civil law of *Mandatum* and *Jussio*. *Mandatum* is amongst equals, by bidding, encouraging, warranting and setting on; and in this case they are both equally guilty, except what difference can be made by the degrees of confidence and earnestness, and by wit and folly, by the advantage and reputation of the man that bids, and the weakness of him that is bidden. But *Jussio* is from superior to inferior; father to son, master to servant, prince to subjects. In this case and amongst these persons the efficiency is unequal, and hath its estimate from the grandeur and sacredness of the authority, and the degree of the fear which can be the instrument of prevailing and determining. And therefore when Attilius had spoken gently with Gracchus *ut patriæ parceret*, seeming to have discovered his design, Gracchus looking terribly upon him, one of his servants, *non expectato signo, ex solo vultu conjectans adesse tempus, ratusque initurum se gratiam apud patronum si primus rem aggrederetur, stricto ferro trajecit Attilium*, saith Appian[d], 'stayed neither for command nor sign, but supposing by his forwardness he should please his patron, and guessing by his cruel aspect it would not be displeasing to him, he kills Attilius upon the place.' Now such an influence as this from a superior to an inferior is so little, that the servant is much more to blame than the master. But when Henry the second in a rage complained that none about him would rid him of that peevish man, meaning archbishop Becket, it was more than the frown of Gracchus, but yet not so much as to lessen the fault of the sacrilegious homicides; because there was no violence done to their choice, but the crime entered upon the account of lust and ambition, and that was as bad as if it had begun and ended upon the stock of their own anger or revenge. But when a prince or a lord commands his subject to sin, as Domitius the father of Nero[e] commanded his freed man to drink to drunkenness, so earnestly that he killed him for refusing it, and as Cambyses did to Praxaspes[f]; then it is evident that the prince is so much more guilty than he that obeys by how much it is evident that the subject sins with less delight, and a more imperfect choice, and with a will which in its actions suffers diminution: and therefore in such cases servants are very much excused from punishment in exterior courts, as knowing that such actions proceed from an excusable principle, from a regardful obedience, and an undiscerning subjection; which because in most things it ought not to dispute, they not discerning their utmost limit, being born to serve, not to rule and distinguish by their reason, and besides this, having all their fortune bound up in their master's frown or favour, are very much to be pitied if they obey too much;

[d] De bello civil., l. i. [cap. 25.] [e] [Sueton. in Nerone, cap. 5.]
[f] [Herod. Thal., cap. 35.]

Etenim quod imperante te servus tuus
Faciebat, abs te id esse factum existimo[g].

And this the law itself observes in the commands of some superiors: *Qui jussu judicis aliquid facit, non videtur dolo malo facere, cui parere necesse habet*[h]. 'The command of such a superior whom we esteem it necessary to obey, exempts our obedience from being criminal.' And though this of judges be a particular case, because *Res judicata pro veritate accipitur*[i], says the law, they declare law by their sentence and commands; yet the Romans observed it in the case of clients and freed men to their patrons, as Livy[k] reports it in the case of the freed man of Appius the decemvir; and the old books of philosophers observed it in the obedience of children to their parents, Aulus Gellius[l] recites out of them.

§ 8. But then this also admits of one distinction more, which the law thus expresses[m]; *Ad ea quæ non habent atrocitatem sceleris vel facinoris, ignoscitur servis, si vel dominis vel his qui vice dominorum sunt, velut tutoribus et curatoribus, obtemperaverint,* 'servants and inferiors are excused if they transgress at the command of their superiors in a small matter, but not in a great.' This is observed by the sages of our common law. If a *feme covert* doth steal goods by the commandment of her husband (without other constraint), this hath been holden to be felony in her, saith sir Richard Bolton[n] the lord chancellor of Ireland: and for this he quotes Bracton[o], and adds this reason out of him; for *licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum,* 'in great matters and sins of high nature a wife is not to be excused for her obedience.' But if the husband not only commands, but uses compulsion, then it is so far excused that in the wife the theft is not felony; but murder is, because the greatness of the horror in such a fact is sufficient to prevail against the husband's threatenings and her own fear, unless there were in her some evil principle. If a servant defending his lord's right do some injury, he is excused in law[p], but not if he kills a man; if he speaks a rude word he may be borne with, but not if he steals a horse. And this also hath some proportions of truth in the court of conscience, that if the superior be great, and the command be urgent, and the instance not very considerable, the fault is by every of these considerations very much lessened, but the man is not totally excused; his excuse is upon the stock of fear or a great

[g] Avian. fab. [Incert. inter fabb. C. interpr. G. Faerno, fol. 52, 4to. Rom. 1564.]

[h] L. 167. § 1. 'Qui jussu.' [Digest., lib. l. tit. 17.]

[i] L. 207. ff. de reg. jur. ex Ulpian., lib. i. ad legem Juliam et Papiam. [ibid.]

[k] Lib. iii. [cap. 45.]

[l] Lib. ii. [cap. 7.]

[m] L. 157. § 'Ad ea quæ.' [Digest., lib. l. tit. 17.]

[n] ['A justice of the peace for Ireland,' &c., book i. chap. 21. § 3. p. 91. fol. Dublin, 1638.].

[o] [lib. iii. cap. 32. fol. 151 b. fol. Lond. 1569.]

[p] L. 2. 'Is qui in puteum,' § 6. 'Si tutoris jussu,' ff. quod vi aut clam. [Digest., lib. xliii. tit. 24.]—l. 17. 'Sed si unius,' § 'Si jussu domini,' ff. de injuriis. [lib. xlvii. tit. 10. l. 17. § 7.]

temptation: so far as they intervene in the present case, and so far as they can excuse in any (which I am afterwards to consider), so far the guilt suffers diminution. But the advice of the son of Sirach[q] is the great rule in this question, "Accept no person against thy soul, and let not the reverence of any man cause thee to fall."

§ 9. But all this is to be understood of those actions which are criminal both in the commandment and in the obedience, in the sanction and in the execution, such as are adultery, murder, treason, blasphemy, and all the prevarications of the natural law, in all moral precepts the transgression of which can by no intention become legitimate. But in the positive and temporary laws of God which enjoin no moral, natural rectitude, but simple and just obedience during the abode of that law, the subject, the son, or the servant, if he be commanded by his just superior to an external ministry in the sin of the superior, if he consents not to the sin, and declares against it according as he can be required, sins not at all in the obedience. Thus when Joab[r] and the captains numbered the people against their wills upon the peremptory command of David their king, they had no part in the sin, because they explicitly dissented all the way, and the execution and obedience did not implicitly and by interpretation involve them in it. The reason is, because the act of numbering the people was of itself innocent, and made criminal only by David's circumstances; of which when they had advertised their king, and disclaimed the malice and irregularity, they interested themselves in nothing but the material part: which when it can be separated from the evil heart, as in this it was, and in all the like it may, the obedience is innocent, though the commandment be impious; and therefore David wholly takes the fault upon himself,

——— mea fraus omnis, nihil iste nec ausus,
Nec potuit[s]. . . .

"I have sinned and done wickedly, but what have these sheep done[t]?" To this also is to be added, that even in the case of positive precepts our obedience must be wholly passive, and in no sense active; that is, it must be wholly an act of obedience, without any promoting or advancing the sin in him that commands, no way increasing, or encouraging, or confirming the sin or the sinner.

2) Under this head is reduced the praising of an action: which if it be done with a design to promote it, is first a sin in the approving it secretly, and is another sin in setting it forward publicly. According to this is that saying of the Arabians, *Qui laudat obscœnum perpetrat illud*, 'he that praises an unclean action is himself an unclean person.' And therefore it was good counsel,

Qualem commendes etiam atque etiam aspice[u].——

[q] [Ecclus. iv. 22.]
[r] [2 Sam. xxiv.]
[s] [Virg. Æneid., lib. ix. 428.]
[t] [2 Sam. xxiv. 17.]
[u] Horat. [lib. i. epist. 18. 76.]

for by our words we shall be judged: but, as Sallust[x] said of Cæsar and Cato, *alius alia via,* 'some one way, and some another' get great names. Cato was famous for discountenancing, Cæsar for being a patron of evil men; but Cato was the better man: and upon this account Pliny[y] commends one, *ornavit virtutes, insectatus est vitia,* he adorned virtues with a fair character, but reproached vicious persons: and he that by praises and dispraises respectively does not distinguish virtue and vice cannot be a good man.

Ne laudet dignos, laudat Callistratus omnes.
Cui malus est nemo, qui bonus esse potest[z]?

For in vain do laws make a distinction between good and bad, if they be all blended in a common reward. *Male pereas qui gratias virgines meretrices effecisti,* said Democritus[a] to one that gave large gifts to all men alike. Concerning which it was excellently said by Maximus Tyrius[b], *Qui largiuntur indignis ea quæ dignis conferenda essent, tria præstant absurda: nam et ipsi jacturam faciunt, in bonos sunt injuriosi, malosque roborant segete ac materia vitiorum suppeditata:* 'to give to vice any of the treatments or rewards of virtue is a treble mischief: the gift or reward is lost, and injury is done to virtue, and evil men are encouraged in their evil courses.'

§ 10. 3) 'By consent, silent and implicit, we are partakers of the fact of others: by not contradicting we are sometimes adjudged willing.'

Of the main part of the proposition there is no doubt but that a consenting to evil is a sin; a consenting to any action gives it as much authority, being, and warranty, as his consent can effect: but the question here is what are the signs of consent when it is not expressed, and when the man that is silent is justly presumed willing. This enquiry is of use in the matter of presumptive dispensations, and in the participation of good and evil actions and rewards. But it hath in it but little difficulty. For

§ 11. It is evident that then silence is an implicit consent, when the superior or the interested person, whose consent can verify the act, and whose power can easily hinder it, and who is bound to hinder it if it be unlawful, does yet hold his peace, and forbids it not. The reason of this is, because every man is supposed to do his duty, unless the contrary be known: and therefore when a prince sees his subjects doing what the law forbids, and which he can easily hinder, it is to be presumed that he dispenses with them in that case, because he knows that they will expound his silence to be a license; and therefore he also intends it so, so long as he is silent, or else he does unreasonably, and to no good purpose holds his peace.

[x] [Potius Liv., lib. i. cap. 21: et cf. Sallust. Jugurth., cap. 54.]
[y] [lib. vi. epist. 21.]
[z] Martial. [lib. xii. epigr. 81.]
[a] [In loc. comm. per Stobæum, et Antonium et Maximum monachos, serm. lxxvii. p. 277. fol. Franc. 1581.]
[b] Serm. viii. de benef. [al. Phot. apud eosdem, p. 276.]

§ 12. But this is not true in those things which to their stabiliment or warranty require a positive act. For sometimes a silence is but an indifference and neutrality, according to that of the law[c], *Qui tacet non utique fatetur, sed tamen verum est eum non negare;* 'he that holds his peace neither confesses nor denies:' and in the canon law[d], *Id in tua ecclesia dissimulare poteris, ita quod nec contradicere, nec tuum videaris præstare assensum;* the bishop's dissembling or taking no notice in some cases is expounded neither to be a contradiction nor consent: and the gloss *in cap.* '*Cum jamdudum,*' *de præben.*[e] affirms, *Multa per patientiam tolerantur, quæ si deducta fuerint in judicium, exigente justitia non debent tolerari,* 'some things are patiently suffered, which if they were publicly complained of ought not to be suffered.' But these seeming antinomies are both very reasonable in their own senses, and therefore are easy to be reconciled.

§ 13. For if the act about which the superior is patient be connived at, it is either because for some reasonable cause he pardons the criminal; or else because his patience is necessary and by constraint, he cannot help himself. For no silence is esteemed a ratihabition of a past act: because when the thing is done without the leave of the superior, his silence or speaking cannot alter it, or legitimate the action if it was evil; at the most it does but pardon what is past, which is no allowance of any future action of the same nature. Indeed in the court of conscience such a silence, or not reproving of a past fault, may be want of duty and discipline, and a criminal omission of what we are obliged to; but hath no legal or natural causality upon that action which is past, and can be but an accidental cause or occasion of a future.

§ 14. But then silence is an interpretative consent, when it is α) a silence of a thing observed, and β) at present, and γ) that can be hindered: and then indeed in law it is a great presumption, but not always in conscience; because it may proceed from a neglect of duty that the superior takes no notice of the action, or from many other causes, as pusillanimity, just fear, or weakness, which because they cannot always be proved or observed, they may conclude legally from silence to consent or dispensation: yet the process of conscience must be upon more wary grounds, and where there is so much fallibility in the presumption, the conscience must proceed to action upon more certain accounts, and must strictly follow her rule, or must have greater causes to justify her liberty.

§ 15. And therefore though the superior be silent, and does observe the action, and can hinder me; yet I am not to presume that he dispenses, or consents, or gives me leave to go besides the law, unless there be in the state of my affairs a just cause of dispensation,

[c] L. 142. ff. de reg. jur. [Digest., lib. i. tit. 17.]

[d] C. 'Super eo,' de cognat. spirituali. [Decret. Greg. IX., lib. iv. tit. 11. cap. 3. col. 1376.]

[e] [In lib. iii. tit. 5. cap. 18. col. 966.]

and yet a reasonable cause of hindering me from asking, or him from expressing his leave; then silence may be presumed to be leave, though the cause of dispensation be probable only, and not very necessary.

§ 16. In the reducing this to practice three cautions are to be attended.

1) When a subject proceeds to action upon the presumption of leave, or a tacit dispensation, this presumption or supposition must be made use of before the action be done, not afterwards. For it can never be honest to do an act in hope to get leave afterwards, for until the leave be actually given or reasonably presumed, it is prohibited, and consequently unlawful; and if a dispensation were afterwards given and obtained, it were nothing but a pardon, which is so far from making the past action to be innocent, that it supposes it to be criminal, for else there were no need of pardon. He that sins in hope of pardon, fears nothing of the sin but the smart, he thinks there is no evil but punishment; and therefore hath nothing towards virtue but the fear. If therefore before the action be undertaken the dispensation be not presumed, nothing that comes after can change the action.

§ 17. 2) This presumption is not to be extended beyond that very action that is done in the presence or within the notice and observation of the superior. For although it should be true that he does give tacit consent or leave to this particular, yet it follows not that therefore he does so to any or all of the same kind. For that may be just or tolerable once, which if repeated may be changed in circumstances, or become evil example, or of intolerable effect by the very repetition; or the mind of the superior may change, or the causes of dispensation may cease: and after all, since this dispensation wholly depends upon the consent of the superior, and this consent is then only justly presumed when he observes the action and forbids it not, the presumption is wholly at an end when he does not see it; and therefore a tacit consent or leave to an observed action can at no hand be extended to a consent or leave to others that are not observed by him.

§ 18. 3) If the tacit dispensation be of such nature that it cannot give leave to a present observed action, but by introducing a faculty, or state, or potentiality of doing the like, then it is certain that if the present action be tacitly dispensed withal or consented to, it may be extended to all of the like kind; but it is also as certain that such a tacit consent is not so easily to be presumed. The bishop of Bitonto for his exercise was flinging of a leaden weight, and by chance killed his servant who unfortunately crossed the way as the lead was irrecoverably passing from his hand, and for this misfortune in the chance of blood is made irregular. Afterwards in the presence of his superior seeing a young Turk dying who had expressed some inclinations to christianity, baptizes him in the instant before his death, and

was observed and connived at by his superior, and therefore had a presumptive leave or dispensation for his irregularity. But because this single action could not have been dispensed withal but by taking off his irregularity, it took away all that which could hinder his future doing his episcopal office; and therefore he hath the same presumptive leave for the future actions which will not be observed as for the present which was. But then the first presumption must be very reasonable and sure: for although a probable presumption may suffice to conclude for leave in a single present action whose effects determine with itself; yet if it have influence upon the future (as in the case before cited), it ought to be better considered and more warily conducted by the superior, and therefore not readily presumed by the subject. These are the measures of guessing at a consent by silence. There is also one way more of implicit or secret consent, viz.,

§ 19. He does implicitly consent to an action who consents or commands any thing to be done from whence such an action or leave must necessarily follow: and the reason is, because he ought not to do things repugnant to each other. He that makes it necessary for me to do a thing, is the cause of my doing it as much as if he commanded it. And this is more than a tacit consent or dispensation respectively, for it is a virtual. He that collates the order of priesthood upon me intends I should do the whole office. *Princeps enim qui illi dignitatem dedit, omnia gerere decrevit,* saith the law[f]. Thus he that dispenses in the irregularity consents to all the actions which he does by virtue of the removing that impediment who is so dispensed with. Which proposition is only so to be understood when there is nothing wanting to the effecting such an action but the removing that impediment: but it is supposed that he that is dispensed with will use his liberty; and the dispensation if it be at all is directed so, and is in order to it. But if the superior does an action which is not in order to an end, neither in order of nature or of intention, but yet it can be consequent to it, that consequent action is not to be imputed to him who did something precedent without which that action could not have been done. Thus if a prince pardons a thief, or a friend begs his pardon that killed a man, although he could not have stolen any more without that pardon, yet that after theft or murder is not imputable to him that gave or to him that begged the pardon, unless they did it with that very intention; for the pardon is not in any natural order to any such consequent action, and therefore without his own actual or designed conjunction and intuition cannot convey the crime and guiltiness.

[f] L. 'Quidam,' ff. de re judic. [Digest., lib. xlii. tit. 1. l. 57.] et l. 'Barbarius,' ff. de offic. prætor. [lib. i. tit. 14. l. 3.]

QUESTION.

§ 20. Upon the occasion of this it is seasonable to enquire how far it may be lawful and can be innocent to permit a sin.

The case is this[g]. Pancirone an Italian gentleman invites a German embassador to dinner, feasts him nobly, sets before him plenty of delicious wine, enough to exhilarate him and all his company; but the German after his country fashion thinks it no entertainment unless he be drunk. The question is whether Pancirone sins in setting before him so much more as will fill the utmost capacity of his intemperance. Is it lawful to suffer him to be drunk?

§ 21. If this question had been asked in the primitive church, the answer would have been a reproof to the enquirer, as one who no better understood the laws of sobriety and hospitality, and the measures of the christian feastings. Posidonius[h] tells of S. Austin, *Usus est frugali mensa et sobria, quæ quidem inter olera et legumina etiam carnes aliquando propter hospites et quosque inferiores continebat: semper autem vinum habebat, quod tamen moderatissime bibebat, quia noverat et docebat, ut apostolus dicit, quod omnis creatura Dei bona sit, et nihil abjiciendum quod cum gratiarum actione percipitur:* 'he had that which was good and useful for himself according to his own measures, and something better for strangers: he always had wine, but it was drank very sparingly; because "every creature of God is good, if it be received with thanksgiving."' But if the guests be permitted to drink to drunkenness, who shall say Amen at thy giving of thanks? or how shalt thou give thanks at the spoiling of the gifts of God? There is no peradventure but as a feast is the enlargement of our ordinary diet, so the entertainment of guests is a freer use of our liberty, so it be within the limits and capacities of sobriety. But though the guests' meal may be larger than our ordinary, yet we must secure our own duty more than we can secure theirs. When the Greeks whom Lucullus feasted wondered why for their sakes he should be so large in his expenses, he answered, *Nonnihil, O hospites, vestri causa, sed maxima pars Luculli gratia*[i], 'something of this, O guests, is for your sakes, but the most of it is for my own magnificence.' We should take care to do so, that though for our guests we do something more than ordinary, yet our greatest care should be for ourselves, that we do nothing that may misbecome the house of one of Christ's servants. Would Pancirone suffer the German embassador to lie with his women when he entertains him, and make his chambers a scene of lust? Certainly he would esteem it infinitely dishonest, if to an honest family he should offer so great an injury;

[g] See book i. chap. 5. rule 8. § 17, 18. [vol. ix. p. 246.]

[h] [cap. 22. inter opp. S. Aug., tom. x. append. col. 272 B.]

[i] Plutarch. in apophthegm. Rom. [vit. Lucull., cap. xli. tom. iii. p. 318.]

and why may not his chambers minister to lust as well as his dining-room or cellars to beastly drunkenness? and is it not as honourable that the family should be accounted sober as to be esteemed chaste? or is not drunkenness dishonesty as well as lust? and why may not Pancirone as well bid his servants keep the door to wantonness, as hold the chalice to beastly vomitings? In these things there is no other difference, but that as clothes, so vices also, are in and out of fashion as it happens. He that means to be a servant of God, must for himself and all his house take care that God be not there dishonoured. "I and my house will serve the Lord," said Joshua[k]: and when God gave to the Israelites the law of the sabbath, He gave it for themselves and their families and "the strangers within their gates." But so corrupt and degenerous are the manners of Christians, that our feasts are ministries of sin, and every guest hath leave to command the house even when he cannot command himself: but this is not κατ' ἀναλογίαν πίστεως[l], the christian sobriety hath other laws. Does any man when he relieves the poor at his gate give them leave to drink till they be drunk? and yet what they give to the poor is given for God's sake: but when they minister to the rich man within, for whose sake is that excess given? If Codrus asks an alms, we refuse him if we suppose he will make himself drunk with it, and we think we are bound to refuse him: and can it be lawful to give to a guest within what it is unlawful to give to a guest without? If it be unlawful, it is certain it is not unavoidable: but if there be difficulty in declining it to some men, then besides that which is principally intended by our blessed Saviour, we see also there is very great reason in those words, "When thou makest a feast, call not the rich, but call the poor:" these will not tempt you to make them drunk, it may be the others will. If our guest makes himself drunk with the usual provisions which must be indistinctly ministered at feasts, that cannot be helped but by refusing to receive such persons again to our table: but he that knowingly and observingly espies the meeting turn to God's dishonour, and does not put a limit to that sea of drink, and place a shore and a strand to the inundation, will find that God is departed from that meeting, and the pleasing of his drunken guests will not make him recompence for the loss of such an inhabitant. A man must at no hand consent to his brother's sin: and he that can and ought to hinder it, and does not, by interpretation does consent. For he that gives a man a goblet of intemperance, with which he sees him about to drown his soul, is just as innocent as he that lends him a knife to cut his own throat. But this is to be understood when the case is evident and notorious; for in the approaches and accesses to drunkenness the matter is less than in the lending of a knife, because it is yet disputable whether he will finish his intemperance: but if it be plain that drunkenness

[k] [Josh. xxiv. 15.]

[l] [Rom. xii. 6.]

is designed, the case is all one; and if it be not perfectly designed, yet as it steals on discernibly, so the sin of him that ministers to the crime increases up to the same proportion of effect and guiltiness. Hospitality is one of the kinds of charity: and that is but an ill welcome which first procures a fever, and it may be after it an irrevocable damnation.

§ 22. 'He that gives counsel or aid to an action good or evil, consents to it, and it is imputed to him as a product of his will and choice.'

This is expressly affirmed by all laws civil and canon[m], and the municipal laws of all those nations of which I have seen any records concerning this matter: and the interpreters universally consent, with this proviso, that the counsel be so much cause of the action, that without it it would not have been done. For if the action would have been done however, then he that counsels to it is guilty in conscience always; but unless it be in great crimes, and *in detestationem facti*, it is not always punished in law. But if it were it would be very just, so that a difference were made in the degree of punishment: for he whose counsel is wholly author of the fact is guilty of more evil than he who only adds hardness to him who was resolved upon the crime. But in the court of conscience he stands guilty that gives evil counsel, whether the criminal would have done it with or without his counsel: and therefore the laws do very well also to punish evil counsellors.

> Quam bene dispositum terris, ut dignus iniqui
> Fructus consilii primis auctoribus instet?
> Sic multos fluvio vates arente per annos
> Hospite qui cæso monuit placare Tonantem,
> Inventas primum Busiridis imbuit aras,
> Et cecidit sævi, quo dixerat, hostia sacri.

So Claudian[n]. The evil counsellor is first to feel the evil effect of his own pernicious counsel; that is, if his counsel persuade to sin, not if it prove infortunate: not but that even counsel that is given with purpose to do a mischief is highly to be punished, not only by the degree of the evil effect, but by the degree of the malice that advised it; but that those events which were not foreseen or designed cannot be imputed to him that gave the best advice he could, but could not help it if he were deceived in his judgment. But if the counsel be to a sin or an unworthy action, there is no need to expect the event to make a judgment of the counsel.

§ 23. The same also is affirmed in the case of giving aids to an action good or bad; in which there is no variety but of degrees only: for when they are

[m] cap. 'Si quis viduam,' 50. distinct. [cap. 8. Gratian. decret., col. 259.] c. 2. de cler. pug. in duello [Greg. IX. decret., lib. v. tit. 14. cap. 2. col. 1575.]: c. 'Sicut dignum,' § 'clericos,' de homicid. ibid., lib. v. tit. 12. cap. 6. col. 1558.]

[n] Claudian. lib. i. in Eutrop. [157.]

σύν τε δύ' ἐρχόμενω[p],

'in combination,' it is mischief with a witness.

Non caret effectu quod voluere duo[q].

It is an aggravation of the impiety when the zeal of malice is so potent that it is greater than the power, and therefore calls in aid to secure the mischief. But he that so assists that he is the great effective cause of the evil which without his aid would not have been done at all, is entirely guilty.

Sic opifex tauri, tormentorumque repertor,
Qui funesta novo fabricaverat æra dolori,
Primus inexpertum Siculo cogente tyranno
Sensit opus, docuitque suum mugire juvencum[r].

Perillus invented and made witty instruments of cruelty, to invite Phalaris to a witty mischief; but the tyrant was just that once, and made him teach his own brazen bull to roar. But if the aid do but facilitate the work, the assistant is punishable according to the efficacy of his aid, in human laws; but in conscience he is guilty according to the secret malice of the principle: and therefore when Lucius Carpentus killed Nicanor, his page that hated Nicanor mortally, and did nothing but thrust his master's sword further into his heart, to shew his ill will, though Carpentus had sufficiently killed him, was as much a murderer as his master was. In human laws there is great difference in these things.

1) For if many by joined counsel set upon a man and kill him together, though one only gave him a deadly wound, yet all are guilty of the murder, because they all intended it, and did something towards it.

2) But if in heat of blood and by the surprise of passion this be done, he only that gave the deadly wound is the homicide, and the rest are injurious, and are punished accordingly.

3) If one give the deadly wound, and the other knock him on the head and so speed him, they are both murderers alike.

4) If many strike a man, and of all these wounds together he dies, they are equally guilty; for the law justly presumes that their malice is equal, by their conjunct attempt, and there being nothing in the event to distinguish them, the presumption is reasonable and ought to pass into effect.

5) If the man be dead but with one wound, and it be not known which of the assistants did it, they are all alike accounted homicides; for every of them is justly supposed to have had malice enough to have done it, and which of them had the hap to do it is not known; therefore there can be nothing to distinguish them in the punishment, because the guilt is alike, and the event not discernibly any

[p] [Hom. Iliad., K. 224: cf. Arist. eth. Nic., lib. viii. cap. 1.]

[q] [Ovid. amor., lib. ii. eleg. 3. 16.]

[r] [Claudian., ubi supra.]

one's peculiar. But although in external judicatories the proceedings are various, and considering there is no other way of judging what is secret and indistinguishable, this way is necessary and unavoidable, of proceeding by the most reasonable and probable methods of justice; yet in the court of conscience there is a more certain proceeding, and the answer is regular, and one; according to the degree of the will and choice, and the tendency of our affections to the event, so we shall be judged: and therefore concerning this our own conscience is the only measure of our expectations; and the will is the measure of reward. But these things only two can know, the Spirit of God and the spirit of a man; and that's enough to finish the process at the day of judgment.

QUESTION.

§ 24. Whether or no is the making and providing the instruments which usually minister to sin, by interpretation such an aid to the sin, as to involve our will and consent to the sin, and make us partakers of the guilt?

To this I answer, first in general, that all those arts and trades of life which minister only to vanity and trifling pleasures are of ill fame, such as are jugglers, tumblers, players, fencers, and the like; it being an injunction of the apostle[s] that every Christian should labour with his hands τὸ ἀγαθὸν, 'that which is good,' that is, something profitable to the commonwealth, and acceptable to God: and to the same purpose it is that all that a Christian does must be apt to be reckoned amongst one of these heads[t]; τὰ ἀληθῆ, τὰ σεμνὰ, τὰ δίκαια, τὰ ἁγνὰ, τὰ προσφιλῆ, τὰ εὔφημα, either 'the true or the honest, the just or the pure, the lovely or of good report;' and it will be hard to reduce some of those trades to any of these heads. But I cannot see reason enough to say that if any man sins by the using of these arts and their productions, that the artist is partaker of the crime; because he, designing only to maintain himself, and to please the eyes and ears and youthful passions of others, may possibly not communicate in their sin, who over-act their liberty and their vanity. But because such persons are not so wise or discerning as to be able to discern so nicely one formality from another, but desire upon any terms to get as much money as they can, and that if they were so wise as to be able to discern the measures of their duty, they would employ themselves better, therefore in the whole such persons are to be reproved, though the arts themselves might otherwise be tolerated. They are not unlawful because they are directly evil, but because they do but little or no good, such as are jesters, and buf-

[s] [Ephes. iv. 28.] [t] [Phil. iv. 8.]

foons, and jugglers; at the best they are but ματαιοτεχνίαι, 'vain arts,' and if they be not directly punishable, they can have no reward at all. But Alexander[u] did very well to a fellow who made it his trade and livelihood to stand at a distance and throw little peas in at the eye of a needle made on purpose just so big as would receive them: the fellow seeing the prince admire his dexterous aim expected a great reward; and the prince observing the fellow's expectation, rewarded him with a whole bushel of peas. It was a reward worthy of such an employment. A man cannot be blamed for having such an art, but he that makes that to be his trade, cannot be otherwise than an idle person: and therefore although he may be tolerated in the commonwealth where there live many persons more idle and useless than himself, and although, if other things were well, the man could not be directly condemned for this, and said to be in a state of damnation; yet because if other things were well he would quickly employ himself better, therefore such persons when they come near a spiritual guide are to be called off from that which at the best is good for nothing, and stands too near a sin to be endured in the scrutinies after life eternal.

§ 25. But some enquire whether the trade of card-makers and dice-makers be lawful: and the reason of their doubt is, because these things are used by the worst of men, and to very vile purposes, to which these arts do minister, and therefore are reasonably suspected as guilty of a participation of the consequent crimes.

§ 26. To which I answer, that some things minister to sin immediately, others mediately only and by the intervention of something else; some minister to sin inevitably and by their design and institution, others by the fault of them that use them ill; and lastly, some things minister to evil and to no good, others to good and evil promiscuously. These three distinctions make but one difference of things, but give several reasons of that difference. Those things which minister to sin immediately, by their very nature and design, and therefore minister to no good unless it be accidentally and by the virtue of something else nothing appertaining to them, are certainly unlawful: and of this there is no question, and that for all those reasons contained in their description, they are of evil, and they are evil, and they tend to evil. But if they can minister to good, if they of themselves are innocent, if they can be used without doing hurt, although they are generally abused, yet he that makes them in order only to such uses to which of themselves they can and ought to minister, partakes not of the sin of them that abuse the productions of his art and labour. And this is remarkable in the case of pictures and images: concerning the making of which there was a great question in the primitive church; but the case of conscience they thus determined:—it was unlawful to make pictures or images for heathen temples, or for any use of religion: *Imo tu colis, qui facis ut coli*

[u] [Cœl. Rhodig. lectt. antiq., lib. xvii. cap. 31. p. 666. fol. Bas. 1566.]

possint[x]; he that makes them that they may be worshipped is a worshipper of them, that is, he partakes of his sin that does worship. But because the art statuary and of painting might be used to better purposes, therefore they were advised to do so, but to separate them from all approaches toward religion; of which I have already given accounts[y] out of Tertullian *De spectaculis, c.* 23[z]. And the same is the answer concerning the trades of making cards and dice. But although this be but an instance of this rule; yet because it relates to the practice of so great a part of mankind, it may deserve to be considered alone in order to that relation and that practice. For it wholly depends upon this, if it be innocent, if it can be good to play at cards and dice, then the trade of making the instruments of playing is also innocent. If not, that which ministers to nothing but sin must be of the kindred of sin, and in the same condemnation.

QUESTION.

Whether it be lawful to play at cards or dice.

§ 27. S. Chrysostom[a] affirms, *non Deum invenisse ludum, sed diabolum*, 'not God but the devil[b] found out play.' It may be alluded to that of Plato[c], who says that the spirit Theuth invented tables and dice; but then he says that the same spirit found out arithmetic, geometry, and astronomy; and therefore from hence we can make no conjecture. S. Cyprian[d] says that, *Quidam studio literarum bene eruditus multum meditando hoc malum et perniciosum studium adinvenit, instinctu solius Zabuli qui eum artibus suis repleverat: hanc ergo artem ostendit, quam et colendam sculpturis cum sua imagine fabricavit;* 'some very learned person inspired and filled with the arts of

[x] [Tertull. de idol., cap. vi. p. 88 C.]

[y] See lib. ii. chap. 2. rule 6. [§ 31. vol. ix. p. 440.]

[z] [p. 82.]

[a] Homil. vi. in Matt. [t. vii. p. 98 B.]

[b] Quem Deum hujus mundi vocat apostolus: quem Deum scil. hujusmodi ludorum auctorem indigitat Hieronymus Vida Cremonensis, poeta non incelebris,

Mox vero gratum ludum mortalibus ipse
Ostendit Deus, et morem certaminis hujus
Italiæ primum docuit celebrare colonos.
Namque olim, ut perhibent, dilectam Scacchida, quæ non
Inter Seriadas præstantior altera nymphas,
Compressit ripa errantem, et nil tale putantem,
Dum pascit niveos herbosa ad flumina olores.
Tum bicolorem illi buxum dedit, atque pudoris
Amissi pretium vario ordine picturatam,
Argentique aurique gravem tabulam addidit, usumque
Edocuit; nymphæque etiam nunc servat honorem
Et nomen ludus, celebrat quem maxima Roma,
Extremæque hominum diversa ad littora gentes.
[Scacchia, ad fin. p. 132. 8vo. Oxon. 1701.]

[c] In Phædro. [tom. i. p. 185, 6.]

[d] De aleatoribus. [ad calc. Cypriani, p. 33.]

the spirit Zabulus taught the art of dice and tables:' and he adds, that 'he so ordered it that no man might touch the tables till he had first sacrificed to Zabulus.' And therefore M. Mantua affirmed it to be very unlawful to play at dice or tables upon this very reason; *non tantum aleæ lusum crimen esse, sed malorum dæmonum inventum,* 'it must needs be unlawful when it is more than so, as being the very invention of the devil.' And this fierce declamation hath prevailed amongst many wise men to the condemnation of it. Vincentius[e] says, *Manus diaboli est ludus taxillorum:* and Bodinus is yet more particular, he tells us how; for, says he, *in alea et fortuito illius jactu geomantiam artemque diabolicam sitam esse*[f], 'the chance and luck of it is a kind of geomancy or diabolical art.' Indeed if he had meant that the art of conducting the fall of the contingent die had been diabolical, and a juggling art, he had spoken reason and truth: but that there is a diabolical art in the contingency and chance of it is little better than a contradiction; unless he could make it appear that the fall of the dice was by God committed to the devil's conduct: which truly is not very probable[g] in some cases to be admitted; but because it is uncertain, Apherdianus calls it diabolical or found out by the devil, by reason of the craft used in it, and the evils consequent to it.

Dæmonis instinctu sibi quod reperere maligni
Cum variis homines in sua damna dolis.

And indeed this is almost the whole state of the question; for there are so many evils in the use of these sports, they are made trades of fraud and livelihood, they are accompanied so with drinking and swearing, they are so scandalous by blasphemies and quarrels, so infamous by the misspending our precious time, and the ruin of many families, they so often make wise men fools and slaves of passion, that we may say of them that use these inordinately,

Κακῶν .. πέλαγος εἰσοράω
τοσοῦτον, ὥστε μήποτ' ἐκνεῦσαι πάλιν[h],

they are in an ocean of mischiefs, and can hardly swim to shore without perishing. And therefore it is no wonder that holy men and wise commonwealths, observing the great evil of them, and having not skill or experience enough to tell of any good that is in them, have forbidden them utterly. This is the observation of S. Isidore[i]; *Ab hac arte autem fraus et mendacium atque perjurium nunquam abest, postremo et odium et damna rerum; unde et aliquando propter hæc scelera interdicta legibus fuit:* fraud and lying and perjury are the inseparable attendants upon cards and dice, and hatred and great

[e] [Vincent. Ferrer.] Serm. de S. Matthia. [s. p. 4to. Ludg. 1499.]

[f] Lib. i. de dæmonol. [cap. 6. p. 186. 8vo. Franc. 1590.]

[g] ['improbable,'—A.]

[h] Eurip. [Hippol. 823.]

[i] Origin. [lib. xviii. cap. 68. tom. iv. p. 413.]

losses follow; and therefore because of this appendent wickedness, sometimes these are wholly forbidden by the laws.

§ 28. For so we find it forbidden in the civil laws of princes and republics. M. Mantua[k] tells that by an old law of Egypt, every man was easily admitted to the accusation of a gamester or dice-player; and if he were convicted of it he was condemned to the quarries: and Josephus Mascardus[l] tells that those who were remarked as daily and common gamesters were infamous and not admitted to give testimony in a cause of law. It is certain it was forbidden by the laws;

Seu mavis vetita legibus alea[m].

The *lex Roscia* punished those persons with banishment who lost any considerable portions of their estates by playing at dice; and sometimes the laws did condemn them that lost money to pay four times so much to the *fiscus*, as Asconius Pedianus tells in his observations upon Cicero's second book *De divinatione*. Justinian[n] the emperor made an express law against it, forbidding it both in public and private houses. Magnus Sfortia forbad dice and tables to be used in his camp: Philippus Adeodatus severely prohibited it in the commonwealth; so did Charles the seventh of France: for in the perpetual and daily abuse of such sports the commonwealth hath much incommodity, and consequently many interests in the prohibition.

Ludus enim genuit trepidum certamen et iram;
Ira truces inimicitias et funebre bellum[o].

The public peace cannot be kept where public dicing-houses are permitted; and therefore the Romans were so severe against such public houses and scenes of debauchery, that the prætor said, *Si quis eum apud quem alea lusum esse dicetur, verberaverit, damnumve ei dederit, sive quid eo tempore domo ejus subtractum est, judicium non dabo*[p], 'if the gentlemen beat the master of such gaming-houses, or stole any thing from his house at any time, he should have no remedy.' For these were houses of public hatred, and therefore outlawed. And therefore Seneca[q] calls them *loca ædilem metuentia*, 'houses afraid of the magistrate:' *Virtutem in templo invenies, in foro, in curia, pro muris stantem, pulverulentam, coloratam, callosas habentem manus; voluptatem latitantem sæpius ac tenebras captantem, circa balnea ac sudatoria, ac loca ædilem metuentia:* 'you may find virtue standing in courts and temples, and upon the walls of a city, dusty and discoloured, and with brawny hands; but pleasure sneaks up and down

[k] Polymath., lib. viii. cap. 3.

[l] De prob. [vol. iii. concl. 1363.—§ 29. tom. ii. p. 439. fol. Franc. 1619.]

[m] Horat. [lib. iii. od. 24. 58.]

[n] Lib. iii. Cod. Justin. tit. 43. [De aleatoribus et alearum usu,] et in authentic. tit. de Sacrosanctis episcopis. § 'Interdicimus.' [Authent. collat., lib. ix. tit. 6. novell. 123. cap. 10.]

[o] Horat., lib. i. [epist. 19. 48.]

[p] ff. lib. xi. tit. 5. de aleator. [l. 1.] —etiam Wesenbech. ibid. [p. 223. 4to. Amst. 1665.]

[q] De vita beata, cap. vii. [tom. i. p. 533.]

to baths, and sweating-houses, and places that fear the presence of the ædile:' that is, gaming-houses; which we learn from Martial[r].

Arcana modo raptus e popina
Ædilem rogat udus aleator.

'The dice-player, half drunk, newly snatched from his tavern or ordinary, beseeches the ædile for mercy.' But in the civil law the punishments of the gamesters, and especially the keepers of the gaming houses, by the confiscation of the house, nay, the destruction of it, that no man may dwell in it for ever, in that place where God hath been so many times dishonoured and blasphemed, are sufficient indication of that just detestation in which the laws had them: and who please may see them largely described in Danæus[s] and Jodocus Damhouderius[t]. But I observe that the especial remarks that the civil laws of princes and republics put upon this kind of gaming is that it causes many quarrels;

—— dum vitreo geraguntur milite bella[u].

The contention for the victory begets a more cruel war: but this is especially upon the account of money which is then lost, and which the laws most regard, as the cause of all the mischief.

§ 29. But when this question and these observations fell into the hands of the church, that is, of christian and pious princes and prelates, and they that were and ought to be zealous for souls had observed that God was exceedingly dishonoured, that His name was infinitely blasphemed, that much of that precious time which God had allowed to us for the working out our salvation with fear and trembling was spent in luxury, and swearing, and passion, and lying, and cursing, and covetousness, and fraud, and quarrels, and intemperance of all sorts, and that μέθαι and κύβοι, 'drinking' and 'gaming' are joined so frequently that they are knit in a proverb, and that these together baffle the spirit of a man and drive away the spirit of God,

Aleaque et multo tempora quassa mero
Eripiunt omnes animo sine vulnere vires[v],

'they disarm and weaken the mind of a man without a wound;' it is, I say, no wonder that they forbad it so fiercely, and censured it so severely. *Aleator quicunque es, christianum te dicis, quod non es,* said S. Cyprian[x]; 'a common gamester or dice-player may call himself christian, but indeed he is not:' and S. Clemens Alexandrinus[y] says, *inconsideratum luxuriæ amorem otiosis isthæc aleæ oblectamina suppeditare, desidiamque in causa esse:* idleness and wantonness provides these games for the lazy and useless people of the world. And

[r] [lib. v. epigr. 84.]

[s] De alea. [8vo. Gen. 1579; 'Englished by Tho. Newton,' 8vo. Lond. 1586.]

[t] Praxis [rerum criminalium], p. 507. cap. 128 et alibi. [p. 201. fol. Antv. 1646.]

[u] [Lucan. ad Pison., 181. in sylloge vet. poet. per Reichard., p. 59. 8vo. Lips. 1793.]

[v] Ovid. de remed. amor. [146.]

[x] Lib. de aleatoribus. [ad calc. Cypriani, p. 33.]

[y] [Pædag., lib. iii. cap. 11. p. 297.]

therefore S. Bernard[z] said that 'the pious and christian soldiers that inhabit Jerusalem,' *aleas detestantur, . . mimos, et magos, et fabulatores, scurrilesque cantilenas, . . tanquam vanitates aut insanias falsas respuunt et abominantur;* 'they hate dice, and abominate jesters, and jugglers, and players, and idle songs, like vanities and madness.' Upon these or the like accounts the fathers of the council of Eliberis[a] separated these gamesters from the communion. *Si quis fidelis alea, id est, tabula luserit, placuit eum abstinere: et si emendatus cessaverit, post annum poterit reconciliari;* 'a Christian playing at dice or tables is not to be admitted to holy communion, but after a year's penance and abstention, and his total amendment:' and the canon law[b] forbids a clergyman either to play at tables, or to be present at those places where they do. But the capitular of Charles the great[c] joins dicing and drunkenness together, as being usual companions, and forbids them both alike to bishops, priests, and deacons. And indeed when the case is thus, I may say as Schonæus[d] said in the case of Saul,

—— quæ potest esse in tanti sceleris
Immanitate coercenda crudelitas[e]?

No laws are too severe, no sentence is too rigid, for its sentence and condemnation.

§ 30. But if the case can be otherwise, if playing at dice and tables can become an innocent recreation, then all these terrible and true sentences will not reach them that so use it. And indeed even amongst those places and republics where such gaming was so highly condemned and severely punished, some of their braver men did use it, but without the vile appendages, and therefore without scandal and reproach. For first in general, it cannot misbecome a wise and a good man to unbend his bow, and to relax the severities, the strictures and more earnest tendencies of his mind.

Quin ubi se a vulgo et scena in secreta remorant
Virtus Scipiadæ et mitis sapientia Læli,
Nugari cum illo, et discincti ludere, donec
Decoqueretur olus, soliti[f].——

Lælius and Scipio would play till they had digested their meal. And of Archias of Tarentum it was said, Κεῖνος ἐν παισὶ νέος, ἐν δὲ βουλαῖς πρέσβυς, 'he was an old and a wise man in public counsels and employments, but he would play like a young man.' And concerning very many wise princes and philosophers you shall find many

[z] De Christiano milite. [serm. iv. col. 832 L.]

[a] Can. 79. [tom. i. col. 258 D.] vide etiam can. 41 et 42. apostol. [al. 35. Coteler., patr. apost., tom. i. p. 448.]

[b] De vita et honestate clericor., cap. 'Clerici.' [Decret. Greg. IX., lib. iii. tit. 1. cap. 15. col. 932.]

[c] Lib. vi. cap. 203. [Baluz. capit. reg. Franc., tom. i. col. 958.]

[d] [In Saule, act. iv. sc. 4. p. 40. 8vo. Col. 1620.]

[e] Vide etiam Decretum, dist. xxxv. c. 1. 'Episcop.' [col. 189.] et de excessu prælatorum, cap. 'Inter dilectos.' [Decret. Greg. IX., lib. v. tit. 31. col. 1638.]

[f] Horat., lib. ii. sat. 1. [71.]

stories of their confident using lighter but innocent sports for the refreshment of their spirits tired with study and labour, collected by Alexander ab Alexandro[g]. But in particular concerning dice and tables we find in Valerius Maximus[h] related of Q. Mucius, *Aleæ quoque et calculis vacasse interdum dicitur, cum bene ac diu jura civium ac cæremonias deorum ordinasset: ut enim in rebus seriis Scævolam, ita et in scurrilibus*[i] *lusibus hominem agebat:* that 'sometimes he would play at dice and tables, when he had first despatched the business of the commonwealth prosperously, and the affairs of religion wisely; in serious things doing as Scævola should, in his recreations doing as a man:' *qua quidem alea Porcius Cato lusisse fertur animi laxandi causa;* and Porcius Cato himself, wise and severe though he was, yet played at tables to refresh and relax his mind[k]. And if cards or tables have in their own nature nothing that is evil, provided it can be also separated from all the evil appendages, from the crimes and from the reproach, from the danger and from the scandal, that which only remains is, that they as well as other innocent recreations and divertisements may be used. In the case so stated we suppose them only to be recreations and relaxations of the mind: ἐγὼ γὰρ ᾤμην τὴν παιδιὰν ἄνεσίν τε εἶναι τῆς ψυχῆς, καὶ ἀνάπαυσιν τῶν φροντίδων, said Julian[l], 'such little employments are like the pauses of music, they are rests to the spirit and intervals of labour.' And therefore Johannes Sarisburiensis[m] allows of every game, *quæ absque vitio curarum gravium pondus allevat, et sine virtutis dispendio jucundam interpolationem gaudiorum affert,* 'if it can ease our griefs, or alleviate our burdens without the loss of our innocence.'

§ 31. Now that cards and dice are of themselves lawful I do not know any reason to doubt. For if they be unlawful, it is because they are forbidden, or because there is in them something that is forbidden. They are nowhere of themselves forbidden: and what is in them that is criminal or suspicious? Is it because there is chance and contingency in them? There is so in all human affairs; in merchandise, in laying wagers, in all consultations and wars, in journeys and agriculture, in teaching and learning, in putting children to school or keeping them at home, in the price of the market and the vendibility of commodities. And if it be said that there is in all these things an overruling providence; though no man can tell in what manner or by what means the divine providence brings such things to a determinate event, yet it is certain that every little thing as well as every great thing is under God's government, and our recreations as well as our wages. But what if it be, and what if it be not? He can never be suspected in any criminal sense to tempt the divine

[g] [Genial. dier.] lib. iii. [c. 21.]

[h] Lib. viii. [cap. 8.]

[i] Janus Rutgersius legit 'in senilibus,' non 'in scurrilibus;' Pontanus 'in serotinis lusibus;' Scriverius 'in heroicis,' alii 'inseriis' unico verbo.

[k] Alex. ab Alex. [ubi supra.]

[l] In Cæsarib. [init.]

[m] Polycrat., lib. i. c. 5. [p. 22. 8vo. Lugd. Bat. 1639.]

providence, who by contingent things recreates his labour, and having acquired his refreshment, hath no other end to serve, and no desires to engage the divine providence to any other purpose: and this end is sufficiently secured by whatsoever happens. I know nothing else that can be pretended to render the nature of these things suspicious; and this is perfectly nothing: and as for the evil appendages which are so frequently attending upon these kinds of games, besides that they also are as near to other exercises as to these, as to bowling, horse-racing, cock-fighting, the fight of quails and of partridges, bull-baiting, pall-mall, billiards, and all other games for money and victory, to some more and to some less; besides this, I say, the evil appendages are all separable from these games, and till they be separated they are not lawful: but they may be separated by the following advices.

RULES OF CONDUCTING OUR SPORTS AND RECREATIONS.

§ 32. 1) Let no man's affections be immoderately addicted to them. And this requires a great diligence and caution. For as Petrarch[n] said well, *Hoc est in regno stultitiæ commune, ut quarum rerum minor est fructus, et cupiditas et delectatio major sit;* 'in the kingdom of folly we are most pleased with those things by which we have the least profit.' And the want of doing us good is supplied by doing us pleasure. But the moderation of our affections to our sports is best expressed by using them according to those measures which wise and severe men use in their recreations, that is, not to be frequent or long in them. For it is in these as in meat and drink, which are then good when they are necessary and useful to the purposes of our nature and employment. Sleep is necessary, and so long it is good: but a man must not therefore spend the best of his time in sleep, but that time that is allowed to it, and without which he cannot well do his business. The limits of these things are not so straight as necessity, nor yet so large as humour or desire; but as a man may drink to quench his thirst, and he may yet drink more to refresh his sorrow, and to alleviate his spirits, and to ease his grief, provided that he turn not his liberty into a snare, so he may in his recreation and his sports.

> Cito rumpes arcum semper si tensum habueris:
> At si laxaris, cum voles, erit utilis.
> Sic lusus animo debent aliquando dari,
> Ad cogitandum melior ut redeat tibi[o].

Within this bound he must keep, that he lose none of his business for his sport, that he make his other time more useful, that this be the less principal, that it be taken as physic, or as wine at most: and the minutes and little points of this measure are no otherwise to be

[n] [Dialog. xxvi. p. 24. fol. Bas. 1581.]

[o] Phædrus. [lib. iii. fab. 14.]

weighed and considered, but that we take those proportions which ourselves think we need to good purposes, or which we are advised to by a wise guide. To this purpose was that saying of Plato reported by Laertius[p]; *Parum est alea ludere, at non parum est assuescere*, 'it is no great matter to play at dice or tables, but to be accustomed to it is a great matter;' that is, to make it a portion of our business, an expence of our time due to worthy employments: and therefore in the laws, not the action itself, but the abuse, and particularly the frequency, is noted and forbidden. *Ludentes quotidie ad aleam et tabernarum frequentatores inter infames habentur*, says the constitution[q]. *Quorum aut latrunculi, . . aut excoquendi in sola corporis cura consumpsere vitam*[r], 'in men that spend their lives in cards and dice, and making much of themselves, haunters of drinking and gaming-houses.' A man may innocently and to good purposes go to a tavern; but they that frequent them have no excuse, unless their innocent business does frequently engage, and their severe religion bring them off safely. And so it is in these sports, with this only difference, that there can be no just cause to frequent these sports: there is only one cause of using them, and that comes but seldom, the refreshment I mean of myself or my friend, to which I minister in justice or in charity; but when our sports come to that excess that we long and seek for opportunities, when we tempt others, are weary of our business, and not weary of our game,

—— Cum mediæ nequeant te frangere noctes,
Nec tua sit talos mittere lassa manus[s],

when we sit up to midnight, and spend half days, and that often too; then we have spoiled the sport, it is not a recreation but a sin.

§ 33. 2) He that means to make his games lawful must not play for money, but for refreshment. This though (it may be) few will believe, yet it is the most considerable thing to be amended in the games of civil and sober persons. For the gaining of money can have no influence into the game to make it the more recreative, unless covetousness hold the box. The recreation is to divert the mind or body from labours by attending to something that pleases and gives no trouble; now this is in the conduct of your game, in the managing a prosperous chance to advantage, and removing the unprosperous from detriment and loss of victory, so to cross the proverb,

Πέπτωκεν ἔξω τῶν κακῶν οὐ Χῖος ἀλλὰ Κῶος[t],

and that by wit he may relieve his adverse chance, and by a symbol

[p] [lib. iii. cap. 3. n. 26.]
[q] Petrus Follerius. [vid. de contract. censs., in tractt. univ. jur., tom. vi. part. 2. fol. 127 b.]
[r] Senec. de brevit. vitæ, cap. 3. [tom. i. p. 507.]
[s] [vid. Propert., lib. ii. eleg. 33. 25.]
[t] [al. Κεῖος,—Aristoph. Ran. 970.]

learn to make good and virtuous use of every cross accident. But when money is at stake, either the sum is trifling, or it is considerable. If trifling, it can be of no purpose unless to serve the ends of some little hospitable entertainment or love-feast, and then there is nothing amiss; but if it be considerable, there is a wide door open to temptation, and a man cannot be indifferent to win or lose a great sum of money, though he can easily pretend it. If a man be willing or indifferent to lose his own money, and not at all desirous to get another's, to what purpose is it that he plays for it? if he be not indifferent, then he is covetous, or he is a fool; he covets that which is not his own, or unreasonably ventures that which is. If without the money he cannot mind his game, then the game is no divertisement, no recreation, but the money is all the sport, and therefore covetousness is all the design: but if he can be recreated by the game alone, the money does but change it from lawful to unlawful, and the man from being weary to become covetous, and from the trouble of labour or study remove him to the worse trouble of fear and anger and impatient desires. But here indeed begins the mischief, here men begin for the money to use vile arts.

Quærit compositos manus improba mittere talos[u].

Here cards and dice begin to be a diabolical art, and men are witty to undo or defraud one another,

. . . . . Neque enim loculis comitantibus itur
Ad casum tabulæ, posita sed luditur arca[x].

Men venture their estates at it, and make their families sad and poor, because the dice turn up an unlucky chance: and what sport is it for me to lose my money if it be at all valuable? and if it be not, what is it to my game? But sure the pleasure is in winning the money. That is it certainly. But

Hoccin' est credibile aut memorabile,
Tanta vecordia innata cuiquam ut siet,
Ut malis gaudeant, atque ex incommodis
Alterius sua ut comparent commoda? ah!
Id ne'st verum? Imo id est genus hominum pessimum[y].

Nothing is more base than to get advantages by the loss of others; they that do so, and make the loss of their neighbour their game and pastime, are the worst of men, said the comedy. But concerning the loss of our money, let a man pretend what he please, that he plays for no more than he is willing to lose; it is certain he is not to be believed: for if that sum be so indifferent to him, why is not he easy to be tempted to give such a sum to the poor? to give that sum? his sport will not be the less if that be all he designs. *Posita dum luditur arca*[z],—*stat pauper nudus atque esuriens ante fores, Christus-*

[u] [vid. Mart., lib. xiv. epigr. 16.]
[x] [Juv. sat. i. 90.]
[y] Terent. Andria. [act. iv. sc. 1. 1.]
[z] [vid. Juv. sat. i. 90.]

que in paupere moritur[a]; 'whilst men play for great sums of money, a poor man at the door, redeemed by the blood of Christ, wants a shilling, and begs it for Christ's sake, and goes without it.' Whenever the case is this or like this, he sins that plays at cards or dice or any other game for money. It is alike in all games, for I know no difference; money is the way to abuse them all: and cards and dice, if there be no money at stake, will make as good sport and please the mind as well as any the sports of boys, and are as innocent as push-pin. For if we consider it rightly, from hence is taken the great objection against cards and tables, because men at these venture their money, and expose their money to hazard for no good end, and therefore tempt God; and certainly to do so is unlawful, and that for the reason alleged: but when we play only for recreation, we expose nothing of considerable interest to hazard, and therefore it cannot be a criminal tempting of God, as it is in gaming for money,

Ubi centuplex murus rebus servandis parum'st[b],

where no wit, no observation, no caution, can save our stake: for

Adversis punctis doctum se nemo fatetur;
Vulnera plus crescunt punctis quam bella sagittis,

says the epigram[c], no man is crafty enough to play against an ill hand; and therefore to put a considerable interest to the hazard of the ruin of a family, or at least more than we find in our hearts to give to Christ, is a great tempting of God. And in these cases, as I have heard from them that have skill in such things, there are such strange chances, such promoting of a hand by fancy and little arts of geomancy, such constant winning on one side, such unreasonable losses on the other, and these strange contingencies produce such horrible effects, that it is not improbable that God hath permitted the conduct of such games of chance to the devil, who will order them so where he can do most mischief, but without the instrumentality of money he could do nothing at all.

§ 34. There are two little cases pretended to lessen this evil, and bring it from unlawful to lawful. The one is, that when a man hath lost his money, he desires to play on for no other reason but to recover his own: the question is whether that be lawful or no. To this I can give no direct answer, for no man can at first tell whether it be or no: but at the best it is very suspicious, for it engages him upon more loss of time, and he tempts God in a further hazard, and gives himself the lie by making it appear that, whatever he pretended, he did play for more than he was willing to lose.

Sic ne perdiderit, non cessat perdere lusor,
Et revocat cupidas alea sæpe manus[d].

[a] S. Hieron. ad Gaudent. [epist. xcviii. tom. iv. part. 2. col. 799.]
[b] Plaut. Persa. [act. iv. sc. 4. 11.]
[c] [Incert. in anthol. Lat., epigr. 917. tom. ii. p. 14. ed. Meyer, 8vo. Lips. 1835.]
[d] Ovid. [Art. amat., lib. i. 451.]

He plays on that he may give over, and loses more that he may not lose so much, and is vexed with covetousness, and chides his fortune, and reproves he knows not what: so that by this time I can tell whether he sinned or no; for though it was hard to say whether he did well or ill to desire the recovery of his money, yet when we see upon what terms it is designed and acted, the question is very easy to be resolved, and the man had better sit down with that loss than venture a greater, and commit more sins.

§ 35. The other case is this; if I can without covetousness of the money play, is it then lawful? and to shew that I am not covetous, I will give the money I win to the standers by, or to my servants, or to the poor. When Theodoric king of the Goths[d] did win at dice or tables he was very bountiful to his servants, and being over pleased with his own good fortune, would grant them any thing. But Augustus Cæsar[e] did use to do this thing bravely. He gives this account of himself in a letter of his to Tiberius; *Ego perdidi viginti millia nummum meo nomine; sed cum effuse in lusu liberalis fuissem, ut soleo plerumque. Nam si quas manus remisi cuique exegissem, aut retinuissem quod cuique donavi, vicissem vel quinquaginta millia: sed hoc malo. Benignitas enim mea me ad cœlestem gloriam efferet.* He lost (suppose) twenty thousand crowns; but it was not his ill fortune or his ill conduct, but his excessive liberality: he forgave to many what he had won, and other sums which he took he gave to the standers by, and chose this bounty as the way to immortality. Now it is true this is a fair indication that covetousness is not the prevailing ingredient; but to him that considers it wisely it will appear to be but a splendid nothing. For what kind of sport is that to bring it into my power to oblige my play-fellow with his own money? and what bounty is that by which I reward my friends and servants with another man's estate? Parysatis[f] did it yet more innocently, when playing with her young son Artaxerxes, she on purpose lost a thousand darics at a throw, to help the young prince to money. Thus far it was well enough; for I doubt not but it is as lawful to lose my money as to give it away, if there be nothing else in it: but besides that it is not so honourable, it may be, he that plays against me is not of my mind, or of my ability, and I correspond to him in an action in which he is not so innocent as I should be, if I did not something minister to his evil: so that though I play that I may oblige him, yet there are so many circumstances required to keep myself and him innocent, that it is a thousand times better in some cases to give him something, and in all cases to play for nothing.

§ 36. For it is a worthy enquiry, if we ask whether it be lawful for a man to possess what he gains by play. For if it be unlaw-

[d] [Sidon. Apollin., lib. i. epist. 2.—Max. bibl. vet. patr., tom. vi. p. 1078.]

[e] Apud Sueton. [Octav. cap. 71.]

[f] [Plutarch. Artax., cap. 17. tom. v. p. 476.]

ful, then when he hath won he hath got nothing, but is bound to make restitution, and cannot give alms of that; and then it can be good for nothing, but on all sides pierces his hand that holds it like a handful of thorns. But in answer to this question, if I shall speak what I think, I am like to prevail but little, because the whole world practises the contrary;

—— Et nunc in hacce publica
Contage morum, congreges inter malos
Malum esse jus est[g].

Nam nunc leges nihil faciunt quod licet, nisi quod lubet[h],

Nothing prevails but evil manners and evil propositions: and in such things as these it is easy to confute a good counsel or a severe reproof, by saying, the man is angry, or too strict, and all men are not of his mind. Therefore in this enquiry I shall only tell what I have learned in the schools of wisdom, in the laws of wise people, and the sayings of holy men. In the civil laws of the Romans[i], all the money that these gamesters won was taken from them and spent upon public works; and he that lost and paid the money was punishable, for the senate forbade to play for money, or to make any promise or give any pledge for payment. The same hath been forbidden by the laws of many republics, *ut quod ille in alea perdiderat, beneficio legis dissolveret*[j], that the law should pay what the fool and the prodigal had lost. An old epigrammatist[k] affirms that such gains will never thrive,

Per scelus immensas quid opes cumulare juvabit?
Turpiter e manibus res male parta fluit.

And no wonder if such gains be the purchases of a thief, and no better than robbery. Aristotle[l] joins them together in the same kind of dishonourable crime, Ὁ μέν τοι κυβευτὴς καὶ ὁ λῃστὴς τῶν ἀνελευθέρων εἰσίν, αἰσχροκερδεῖς γὰρ· 'he that plays at dice for money and the thief are illiberal gamesters, for they are guilty of filthy lucre:' and Seneca[m] says,

—— immensas opes
Jampridem avaris manibus, ut perdat, rapit.

He is greedy, and gets nothing; he wins much, and loses more; he snatches from his neighbour what belongs to him, and loses that and his own beside. Pascasius Justus[n] observes that the Spaniards call such gamesters *tahur*, which is the metathesis of *hurta*, a thief; for to cast the dice for money, what is it but to desire to take an-

[g] [Baudius de sap. civ., lib. iv. quoted by J. Souter de aleatoribus, lib. ii. cap. 4. (in thesaur. antiq. Gr. J. Gronovii, tom. vii. col. 1078.) from which work the author's materials on this subject seem to have been largely derived.]

[h] [Plaut. Trinum., act. iv. sc. 3. 25.]

[i] Lib. iii. cod. Justin., tit. 43. [§ 1.] Vide ibi Cujacium et Wesenbech., ff. l. 11. tit. 5. [vid. p. 589. supra.]

[j] Cicer. ad Atticum, lib. i. epist. 13. [lege Philipp. ii. cap. 23.]

[k] [Incert. apud D. Souter. ubi supra, cap. 10.]

[l] Lib. iv. ethic., c. 3. [tom. ii. p. 1122.]

[m] [Octav. 433.]

[n] [De alea, lib. i. p. 49. 4to. Neap. Nemet. 1617.]

other man's money against his will? and that is theft. S. Bonaventure[o] says that which is gotten by play is possessed by no good title, and cannot be lawfully retained: he that lost it hath indeed for his folly deserved to lose it; but he that hath it does not deserve to keep it, and therefore he must not, nor yet must he restore it to him that lost it, unless he persuaded or compelled him to play; but therefore the money is to be given to the poor: and the same also is expressly affirmed by S. Austin[p]. Now if it be not lawful to retain such purchases, they are not our own when we have won them, and therefore it is no thanks to us if we give them away. *Aleatoris eleemosyna invalida est et nihili apud Deum,* saith S. Bonaventure[q]. *Oblatio enim de rapina reprobatur,* saith the canon law, and *eleemosynæ et sacrificium non placent Deo quæ offeruntur ex scelere.* The money is gotten by an equivocal contract, and an indirect rapine, and therefore can never become a pleasing sacrifice to God; it is a giving our goods to the poor without charity, and that profits not, saith S. Paul[r]. But at last, although he that loses his money deserves to lose it; yet because by laws such purchases and acquisitions are forbidden, and we have no right to give alms of what is not our own, and as God will not accept it when it is done by us, so He hath nowhere commanded that it should be done at all, therefore it is certain that all such money is to be restored, if the loser please. *Bona alea amissa tanquam furto ablata (veteres) restituenda putabant.* S. Austin[s] said that 'the ancients did affirm, money won by dice and tables ought to be restored, like the money that was stolen.' But if the owner will not, let it ascend to pious uses. And if this be the state of this affair, it cannot be lawful to play at cards or dice for money. For "the love of money is the root of all evil, which some having coveted, have pierced themselves through with many sorrows." And this appears yet more in the next advice.

§ 37. 3) No man can play lawfully at such games but those who are dispassionate, and of sober spirits, under the command of reason and religion; and therefore to play for money will be quickly criminal, for

> Ploratur lachrymis amissa pecunia veris;
> Et majore domus gemitu, majore tumultu
> Planguntur nummi quam funera[t].

Men may weep solemnly for the dead, but they will be heartily troubled when their money is departed; and therefore there is but little sport in such games. And this Alexander the great[u] rightly observed, when he set a fine upon some friends of his, *quod in ludo aleæ sensisset eos non ludere, sed velut in re maxime seria versari,*

[o] Specul. anim., c. 2. [vid. tom. vii. p. B.] et in sent., lib. iv. dist. 15. part. ii. art. 2. q. 1. in conclus. ad 4. [tom. v. p. 189.]

[p] Epist. liv. ad Macedon. [al. epist. cliii. tom. ii. col. 533 F.]

[q] [ubi supra.]

[r] [1 Cor. xiii. 3.]

[s] [ubi supra.]

[t] Juven. sat. xiii. [130.]

[u] Plutarch. in reg. et imper. apoph. [tom. vi. p. 690.]

fortunas suas omnes aleæ permittentes arbitrio, 'because they did not play at dice, but contend as in a matter of greatest concernment.' And certainly so it is. For do not all the nations of the world think the defence of their money and estates a just cause of taking up arms and venturing their lives? He that plays at games of fortune should put nothing to fortune's conduct but what he can perfectly subject to reason every minute. Seneca[x] tells that Julius Canus was playing at tables, when the centurion being sent upon a desperate service, and went out leading *agmen hominum perituirorum,* 'a troop of men to death,' happened to call him out to march in that service. Julius Canus knew the danger well enough, but being summoned, called to his play-fellow to tell the men upon the tables; and now, says he, do not say when I am dead that you had the better of the game; and desired the centurion to bear him witness that he had one man more than the other. He that is thus even and serene may fairly play; but he that would be so, must not venture considerable portions of his estate, nor any thing, the loss of which displeases him and shakes him into passion. Not that every displeasure, though for a trifle, is criminal; but that every degree of it tends to evil, and the use of it is not safe, and the effect may be intolerable.

Ludit cum multis Vatanas, sed ludere nescit:
Et pŭtat imperio currere puncta suo[y].

If the chances will not run as we would have them, or if our passions will not, then it is at no hand safe to play; unless to fret, and vex secretly for trifles, to swear and lie, to blaspheme and curse, to cheat and forswear, to covet and to hate, can be innocent.

§ 38. 4) Upon these accounts it is that wise men advise that young men be at no hand permitted to play at dice or the like games. *Ab isto lusu arcendi sunt pueri, tum propter pecunias quas perdunt, tum propter vitia quæ colligunt, et mores pravos quos inde addiscunt*[z]*:* young men and boys lose their money, and learn evil manners at such games; they have great passions, fierce desires, and quick angers, and their flames are stirred perpetually with chance. It is a sad story that is told of the young prince[a] the only son of Claudius the emperor, who when he had lost all his money at dice, and had tired out all his invention for the getting more, and could not do it fairly, being impatient of his loss, and desirous of new hopes and ventures, he stole a rich jewel from his father's closet, the prince's tutor knowing and concealing the theft. But it came to the emperor's ear, and produced this tragedy. He disinherited his son, he banished all the prince's play-fellows, and put the tutor to death. Young men are not to be trusted to play with such aspics.

[x] [De tranquill. anim., cap. xiv. tom. i. p. 379.]

[y] [Luxurius, apud Souter. ubi supra, col. 1058.]

[z] Anton. Güevera, horol. princ. [lib. ii. cap. 44. p. 439. fol. Tong. 1601.]

[a] Per Anton. Guevara. [ibid.]

And therefore Sidonius[b] says, *Alea est oblectamentum senum, ut pila juvenum,* 'tables for old men, and the ball for young men.' Cato allows to young men arms, horses, and bows, and such like sports; but would have dice and tables permitted to old men, whose minds are more to be refreshed with diversion than their bodies by laborious exercise. And in allusion to this, Augustus in his letter to Tiberius mentioned by Suetonius[c] hath these words, *Inter cœnam lusimus γεροντικῶς et heri et hodie;* 'yesterday and to-day we played like old men;' that is, at tables. But this is matter of prudence, and not of conscience; save only that old men are more masters of reason and rulers of their passion, and a sedentary exercise being fittest for them, they who cannot but remember that they are every day dying, though possibly they need some divertisement to their busied and wearied spirits, yet they do more need to remember their latter end, and take care to redeem their time, and above all things not to play for any considerable money, not for any money the loss whereof is bigger than a jest: and they that do thus will not easily do amiss. But better than all these permissions is that resolution of Cicero[d], *Quantum alii tribuunt tempestivis conviviis, quantum denique aleæ, quantum pilæ, tantam mihi egomet ad hæc studia recolenda sumpsero,* 'what time other men spend in feasting and revellings, in dice and gaming, all that I spend in my studies:' and that is very well. For though there is good charity in preserving our health, yet there is a greater necessity upon us that we do not lose our time.

§ 39. 5) That our games may be innocent, we must take care they be not scandalous, that is, not with evil company, not with suspicious company. *Ciceroni nequissimorum hominum in ludo talario consessus*[e]*?* 'shall Cicero suffer base persons to sit and play at tables in his house?' That's not well: and therefore he objected it as a great crime to Marc Antony, *domum ejus plenam ebriorum aleatorumque*[f], 'his house was frequented with gamesters and drunkards.' We must neither do evil, nor seem to do evil: we must not converse with evil persons, nor use our liberty to our brother's prejudice or grief: we must not do any thing which he with probability or with innocent weakness thinks to be amiss, until he be instructed rightly; and if he be, yet if he will be an adversary, and apt to take opportunities to reproach you, we must give him no occasion. In these cases it is fit we abstain: where nothing of these things does intervene, and nothing of the former evils is appendent, we may use our liberty with reason and sobriety. And then, if this liberty can be so used, and such recreations can be innocent, there is no further question, but those trades which minister to these divertisements are innocent and lawful.

[b] [vid. lib. v. epist. 17. p. 149. 4to. Par. 1652.]
[c] [Octav., cap. 71.]
[d] Orat. pro Archia poet. [cap. 6.]
[e] Vid. Cic. ad Attic. lib. i. [epist. 16.]
[f] In Philippic. ii. [cap. 27.]

RULE III.

THE ACT OF THE WILL ALONE, ALTHOUGH NO EXTERNAL ACTION OR EVENT DO FOLLOW, IS IMPUTED TO GOOD OR EVIL BY GOD AND MEN.

§ 1. THE will of man in the production and perfecting of a sin hath six steps or degrees of volition, in all which the sin is actual, excepting the first only. 1) The inclination of the will is the first; and that so far as it is natural, so far it is innocent. Sin oftentimes enters in at that door, but the door was placed there in the first creation; it was a part of that building which 'God made and not man,' and in which every stone and stick was good. It was not made for sin, but for virtue; but it was made so, that if we would bring sin in that way, it was in our choice, and at our peril. But although this be the case of our natural inclination, yet if our inclinations be acquired, or increased, or habitual, that is, if they become facilities and promptitudes to sin, they are not innocent: for this state is a state of sin and death, it is the effect of many vile actions and vile desires, it is an aversion from and an enmity against God; it is a bed of desires which are sometimes asleep, and then do no more mischief than a sleeping wolf, but when they are awake they do all the evil they can. And therefore the case of an habitual sinner is such, that even his first inclinations to any forbidden action in the instance of his own habit are criminal as the external effect[g]. But in natural inclinations the case is different. 2) The first beginning of the sin is when the will stops and arrests itself upon the tempting object, and consents only so far that it will have it considered and disputed. Then the will is come too far, not when it is willing a thing should be disputed whether it be lawful or unlawful, good or evil; but when it is willing it be considered which is to be followed, reason or sense, wise counsels or sensual pleasures: for when the will is gone so far it is past beyond what is natural, and come so far towards choice and guiltiness, that it is yet no more friend to virtue than to vice, and knows not which to choose. 3) The next step the will makes is when it is pleased with the thought of it, and tastes the honey with the top of a rod, a little fantastic pleasure beforehand in the meditation of the sin. This prelibation is but the antepast of the action, and as the twilight to the dark night, it is too near an approach to a deed of darkness. 4) When the will is gone thus far and is beyond the white lines of innocence, the next step towards a perfect sin is a desire to do the action, not clearly and distinctly, but upon certain conditions; if it were lawful, and if it were convenient, and if it were not for something that lies cross in the way. Here our love to virtue is lost, only fear and God's restraining grace remains still for

[g] Vide 'Unum necessar.,' cap. 5. 'Of habitual sins.' [vol. vii. p. 150 sqq.]

the revocation of the man to wisdom and security. 5) But when this obstacle is removed, and that the heart consents to the sin, then the spirit is departed, and then there remains nothing but that the sin be 6) contrived within, and 7) committed to the faculties and members to go about their new and unhappy employment; and then both the outward and the inward man hath combined and made up the body of a sin. But the sin begins within, and the guilt is contracted by what is done at home, by that which is in our own power, by that which nothing from without can hinder. For as for the external act, God for ends of His own providence does often hinder it; and yet he that fain would, but cannot bring his evil purposes to pass, is not at all excused, or the less a criminal before God.

QUESTION.

§ 2. But is it not a mercy for a man to be recalled from acting his adultery? Is it not charity to two persons to keep Autolycus from killing the steward of Stratocles? and if so, then there is sin in the action as well as in the affection, and the hand sins distinctly from the heart: but then it will be found untrue to say that all our good and evil comes from the will and choice, and yet it will not be possible to tell from what principle the evil of the hand is derived, if not from the evil will. This brings a necessity of enquiring into the union, or difference, of the actions internal and external, and the influence the will hath upon the external act, and whether it can have any aggravation or degree beyond what it receives from the inward principle.

§ 3. To this therefore I answer, that all the morality of any action depends wholly on the will, and is seated in the inner man; and the eye is not adulterous, but it is the instrument of an adulterous heart; and the hand is not the thief before God, but the covetous desire is guilty: and this appears in this, because if a man takes the goods of his neighbour, which he would not have taken if he had supposed they had been his neighbour's, he is innocent before God. And yet it cannot be denied but it is worse to steal than to covet, it is worse to humble and dishonour our neighbour's wife than to lust after her. But the reason is, because the doing of the action supposes a great many precedent acts of lust, even the whole method and economy of sin; for every act of the will, every degree of desire, is lusting or covetousness; and the external act, which supposes them all, is worse than all them except the last. The natural inclination of the will is but a capacity or readiness and disposition of the faculty, and is no act. But the arrest and stop of the will, the delight in fancying, the desire of action, the consent of the heart, and the deliberation and resolution, these are the acts and products of the will; and the second is worse than the first, and the third worse than the second, and so till we come to the immediate address to the action: but that

action is not worse than the last resolution and deliberate purpose of the will; and therefore when it is charity to hinder the man from acting his lust, it is therefore charity, because in the acting of the sin externally there are more acts of the will, even the whole method of death is completed, and the same acts of will are repeated, or confirmed, and there is mischief done to some person or to some interest, to something besides the sinning man, and there are some contingencies and some circumstances to which new actions of the will must be consenting, and give their influence and renew their acts: but still, if we compare every consent and deliberate purpose of the will with the action, or that part of the action which is immediately produced in it, there is in that event no morality, and no good, and no evil but what is first within. So that he who hinders a man from acting of his lust, does hinder him not from sins distinct from those of his will, but from more sins of the will, from repetition, or confirmation, or abiding in the same chosen folly.

§ 4. Upon this account it will be easy to answer whether is the greater sin, the wishing and desiring a very great evil, and willingly doing but a little one, or the doing a very great evil and an intolerable mischief with a little malice. For it is certain that the sin is much more increased by the malice of the action and effect than by the malice of the will, if the malice of the will be little, and the evil of the event be great and intolerable. For at first to desire a very great mischief, and then to act but a little one, supposes that the great malice went not to its utmost period; it was desired, but not resolved on, and deliberately determined: and then that malice though in itself great, yet it was ineffective, and was retracted before it was consummate by the will, and acted by her subjects the other faculties and members. But now, if a great mischief be done by a little malice, to that little malice all that event is to be imputed: though not to it alone, yet to that malice managed by ignorance, carelessness and folly; which being no excuses, but of themselves criminal appendages, the man shall be judged by his action, not by his ignorant and imperfect choice; because though the choice was naturally imperfect, yet morally and in the whole conjunction of its circumstances it was completely criminal. If this thing happens to be otherwise in any particular, God will discern it, and not man; for the greatness of the mischief in human laws and accounts supposes the greatness of the malice, if malice at all, and not chance wholly, was the principle. But if the question be, in the acting of a great mischief where the sin most lies, in the will or in the event, I say it is originally in the will; and it is equally in the event, if all that event was foreseen and known, although it was not principally or at all designed. He that steals a cow from a widow, and does verily believe that the loss of her cow will not only undo her, but break her heart, though he does not design this, yet because he knows it, all that event is to be imputed to him. They that abuse their own bodies by abominable and unclean

contacts, and the sin of Onan, though they design only the pleasing of their lust, yet if they consider what they do, and what will be the event, they secondarily choose all that event, and are as guilty of it as of that which they principally designed.

—— quod pellice læva
Uteris, et Veneri servit amica manus,
Hoc nihil esse putas? scelus est, mihi crede, sed ingens,
Quantum vix animo concipis ipse tuo.
. . . . . .
Ipsam crede tibi naturam dicere rerum,
Istud quod digitis, Pontice, perdis, homo est [h].

For the internal act of the will and the external act of the man are but one act, unless the instrument and the efficient cause produce two distinct effects in every concourse; and whatsoever is done without is first consented to within, and is but the ministry and execution of the sin within. For the act of choosing is the foundation of all morality: and therefore when not only the first design, but the appendages and other consequents are foreseen, and yet the action is chosen, the will is guilty of so many evils as it chooses directly and indirectly, principally and consequently.

§ 5. But to reduce this doctrine to more minute and particular considerations and order.

OF THE IDENTITY AND DIVERSITY RESPECTIVELY OF ACTIONS INTERNAL AND EXTERNAL, AND THE MULTIPLICATIONS OF SINS BY THEM.

1) EVERY external act proceeding from the internal makes but one moral act, whether it be good or bad. The election and choice is the foundation: and as they are many houses which are built upon many foundations, but many chambers and galleries built upon one foundation is but one house, though there be many rooms; so the internal and external relying upon one basis, operating to the same end, effecting the same work, having the same cause, and being but several lengths of the same thread, do not make two acts; as the soul seeing by the eye hath but one vision, and the will acting by the hand does but her own act by her own instrument: and therefore although they are physically or naturally several actions, because elicit and acted by several faculties, yet morally they are but one; for what the hand or eye alone does, is neither good nor evil, but it is made so by the mind and will.

§ 6. 2) If there be two acts of will in one external act, there is a double malice or goodness respectively. A prince commands his almoner to give much alms to the poor; the almoner being also a good man loves the employment, and does it very often: the external act

[h] Mart., lib. ix. [epigr. 42.]

is but the one ministry of alms, but the internal is both obedience and charity.

§ 7. 3) The external act is the occasion of the intending or extending the internal, but directly and of itself increases not the goodness or the badness of it. For the external act is not properly and formally good or bad, but only objectively and materially; just as a wall cannot increase the whiteness, unless the quality itself be intended by its own principle. But as heat in iron is more intense than it is in straw; so may the goodness or the badness of an internal act be increased by the external: but this is only by accident. By instances of these several assertions, they will be more intelligible. When John surnamed the almoner commanded his boy to carry an alms to a poor man that was sick in the next village, the boy sometimes would detain it and reserve it for his own vanity; but S. John lost not the reward of his charity, for his internal act was good, but it was no cause of the outward event at all. And on the other side, when Mævius lay with his wife Petronilla, supposing she had been Nicostrata, he was an adulterer before God, though by the laws of men he was harmless. And if a man steals a horse in the night from his neighbour's field, and carries him away secretly, and by the morning perceives it to be his own, he is no less guilty before God and his confessor than if he had indeed stolen his neighbour's. The reason is, because the external act hath another cause, which is or may be innocent, but the internal act was of itself completely evil and malicious. In these cases, where the internal volition is not the cause of the external event, the sin is terminated within, and that to him who is to be our judge is as visible as any thing. But when the internal volition is properly the cause of the action external, there more is done than it could do alone. For in a good work the will finds the difficulties which it could not perceive while it was only in purpose; and it is easy to resolve to be patient in sickness when we feel nothing of it, but only discourse it, and cast about in our easy minds what we suppose it will be: but *Tu si hic esses, aliter sentires*, said the sick man[i]; it may be when it comes to be acted, the will shall find new work, new difficulties, and will need new fortifications, and renewed resolutions, and the repetition of acts, and fresh aids of reason: so that although all the good or evil that is in all this is the good or evil of the will; yet this is it which I said, that the external action hath in it the materiality of good and evil, and by accident the external act is better than the internal, that is, the will does better when she reduces her purposes to act very often, than when she does only resolve. And for this very reason:

§ 8. 4) The external act does superadd new obligations beyond those which are consequent to the mere internal volition, though never so perfect and complete. For the external act is exemplar in

[i] ['Facile omnes cum valemus recta consilia ægrotis damus; Tu si hic sis, aliter sentias.'—Ter. Andr. ii. 1. 11.]

virtue, or scandalous in evil; it obliges to restitution, to ecclesiastical censures and legal penalties, in which there are active and passive duties incumbent on us (as I have represented in the third book). Thus also in good things; the external participation of the sacraments hath in it some advantages beyond the internal: but these things are accidental to the action, and nothing of the nature of it; they are nothing of the direct morality, but the consequent of it; which the sinner ought indeed to have considered beforehand, and to act or to omit accordingly.

§ 9. 5) If the course and continuance of the outward act be interrupted, and then proceeded in again, when the cause of the intercision is over, that action seeming but one, is more than one sin or virtuous act respectively. He that resolves to bring up a poor orphan in learning and capacities of doing and receiving worthy benefit, does often sleep and often not think of it, and hath many occasions to renew his resolution: although his obligation be still permanent, yet if he delights in it, and again chooses, so often is the alms imputed to him, he does so many acts of charity. Titius intends to give to Codrus a new gown at the next calends, but forgets his intention; but yet at the calends does upon a new intention give him a gown. This act is but one, but hath no morality from the first intention, but from the second, though there were two internal acts of volition to the same external; because the first did cease to be, and therefore could have no influence into the effect. But this multiplication of actions and imputations cannot be by every sudden and physical interruption, but by such an interruption only where the first intention is not sufficient to finish the external act. Thus if a man against his will nod at prayers, and awakening himself by his nodding proceed in his devotion, he does not pray twice; but once, because the first intention is sufficient to finish his prayer. But if he falls asleep overnight and sleeps till morning, his morning prayer is upon a new account, and his will must renew her act, or nothing is done. But in instances of good this part of the rule hath but little use; for no man will dare to call God to a strict and minute reckoning, and require his reward by number and weight. But in sinful actions there is more consideration; and if we be not strict in our weights and measures, God will; and if we will not be sure to put enough into the balance of repentance, there will be too much in that of judgment and condemnation: and therefore it concerns us as much as we can to tell the number of our sins. Therefore

§ 10. 6) External actions in order to one end, though produced by one internal act or resolution of the will, yet do not make one external act, unless the end be at the same time acquired. Thus if the man resolves to lay wait for his enemy till he have destroyed him, and therefore lays wait to-day and to-morrow, and prevails not until the third day, his sin is more than one, though his resolution was but one. The reason is, because there must of necessity be a repetition

of the same resolution, or at least of some ministering acts toward the perfecting that resolution; and although the resolution and the end were one, yet to every ministering intermedial act there is also some internal act proportionate. Thus every impure contact in order to impure embraces are sins distinct from the final adultery, and so is the joyful remembrance of it afterwards. But because these things have in them some little intricacy, therefore I add this which is plain and useful: every renewing of an external action subordinate to a sinful end is either a repeating of the sin, or, which is all one, it is an aggravation of it; it extends it, or intends it. He that calls a man fool three times together either commits three sins, or one as great as three: and he that strikes seven blows to kill a man, hath so many times lift up his hand against God; and though he hath killed the man but once, yet he shall be avenged seven times. But if after any notable interruption of the act the intention be renewed, so often is the sin repeated, though it be but one external event afterward. He that resolves every day of the week to be absent from divine service the sunday following, is to estimate his sin by the number of his internal actions, and not by the singularity of that omission.

§ 11. 7) Internal acts of the will are then multiplied, when they proceed after an express revocation, or a deliberate intermission, or a considerable physical interruption, or by an actual attendance to things incompossible and inconsistent with the first resolution. There is no difficulty in these particulars, save only that in making judgments concerning them we proceed by prudent and moral proportions, by the usual measures of laws, and the accounts of wise men; only the extremes are evident and notorious. For he that being upon his knees loses his attention for a minute and then recalls it, does not pray twice, or so often as he again thinks actually of what he is doing; and we are sure that he who says a *Pater noster* to-day and another to-morrow, does pray twice: and between these no certain rule can be given but what is measured and divided by prudence and similitude with the unity of natural and artificial compositions. But he only does well who secures his cases of conscience in this enquiry by interrupting his evil acts as soon as they begin, and gives them quite over as soon as they are interrupted, and when he hath chosen well, perseveres as long as nature and exterior accidents will give him leave, and renews that choice as soon as his divertisement can cease.

QUESTION.

§ 12. In the pursuit of the matter of this rule, it is seasonable to enquire concerning what degrees of guiltiness are contracted by the beginnings and desires of wickedness which are imperfect and unfinished.

I have already[k] given account that the inward acts of will are very

[k] Lib. iii. chap. i. rule 4. [p. 45 above.]

often punishable by human laws, and from thence some light may be reflected to this enquiry, which is concerning the estimate which God and the conscience are to make of imperfect actions: for though in human accounts and the estimate of our laws, that a thing is secret or public is a great difference and concernment; yet in this question, and in relation to God and the conscience immediately, it is nothing at all; for nothing here is secret, every thing is visible, and it is always day here. But now the enquiry is concerning those things which are imperfect, and so sometimes are secret as to men because they are only in desires, and sometimes they are public, but yet not finished and completed. And here the rule is, *Nunquam mens exitu æstimanda est*[k]. God judges not by the event, but by the mind, by the good or ill will: so Apuleius[l], *In maleficiis etiam cogitata scelera, non perfecta adhuc, vindicantur, cruenta mente, pura manu.* He that thinks it, that is, that resolves it perfectly, putting the last hand of the will to it, his mind is bloody, though his hand be pure, and shall find an equal vengeance. But this is to be understood of the last act of the will, and that which is immediate to the external action; if it be in counsel, that is, not whether it shall be done or no, but how it shall be done, it is as bad and hateful in the eyes of God as the external violence. To this purpose is that of Paulus the lawyer[m], *Consilium uniuscujusque, non factum puniendum est,* 'not the fact, but the counsel is to be punished:' by counsel meaning the design and resolution, the perfect and complete volition, which is then without all question come to the perfection of its malice and evil heart, when it is gone as far as to the beginning of action. *Insidiatus civi etiamsi non effecerit scelus, pœnas tamen legibus solvet,* said Quintilian[n], 'he that lays a snare for a man's life shall smart for it, though the man escape; the laws shall punish him:' but if they do not, it is all one in conscience. For as Donatus[o] said well, *Non perficere, sed conari velle aliquid ad scelus, effectio est, etiamsi non potest fieri.* It is nothing to the sinner that God defends the innocent and rescues him from his fraud, or violence, or slander; he hath done his work when he resolved and endeavoured it. For there is no degrees of morality beyond the last act of the will: the sin or virtue may be extended by multiplication or confirmation of the same acts, but no way intended beyond that act of the will which commands execution.

§ 13. But this distinction ought to be observed not only in order to punishments inflicted by human laws upon criminals accused of imperfect acts, but in order to conscience. For though the whole morality of the act depends upon the last purpose of the will, and is before God the fulness of the sin in respect of degrees of any simple sin; yet when it passes on to execution, the will may grow worse by repetition of her acts, or abiding in them she may sin more sins.

[k] Quintil. [declam. cclxxxi.]
[l] [Florid., lib. iv. cap. 20.]
[m] Sententiar. 5. [lib. v. tit. 23. § 2. in corp. jur. civil.]
[n] [vid. inst. orat., lib. x. cap. 5. § 13.]
[o] In Andria, i. 5. [p. 33. 4to. Par. 1602.]

For the acts themselves about which there are endeavours made, are not always perfect, so as the criminal can perfect them; for it is not to all purposes perfect when the will hath commanded the resolution to be acted, no, nor when something is done towards it by the sinning man, but something else may be added, and till it be, there is some difference in the case. The examples will clear it. Priscus Merula resolves to kill his brother Taurinus, and in order to it, buys a dagger, waylays him as he goes to Augustus, sets upon him, throws him down; but as he is lifting up his hand to strike, hears a noise behind the hedge, and being affrighted, curses his brother and wishes him dead, and runs away. Merula is in the sight of God guilty of murder, and if he had killed him effectively, there had been no greater malice, but more mischief, and more acts of malice; and therefore the judges are to diminish something of his punishment, not only because the life of a citizen was not lost, but because Merula had not done all his part of the murder, that is, his brother could not have died unless he had done something beyond what he did. But when the Egyptian nobility being weary of a dull melancholy prince, who by his healthless spirit was good for nothing, gave him a brisk poison to despatch him; that which would have burnt to ashes any person that had any fire within him, did but heighten him to the ordinary temper of another man, it only warmed him into an active spirit, and he became a wise prince. Here the murder was not effected, but there was on the traitor's part nothing wanting to the completing of the wickedness: and therefore as in human laws they are to have no abatement of sentence extraordinary, so in the court of conscience they are to think of no excuse, no diminution, but every thing is present that can make all that greatness which can be in the nature of that sin: and in the first case there may be an alteration so timely as to change the mind before it was at the utmost end of the line of wickedness; but in the second case, whether the effect follow or no, there is place left for nothing, unless peradventure for repentance. That part which concerns human laws is alterable as men please, and in christendom (unless it be in the greatest crimes) custom hath against the purpose of laws given impunity to them who without effect have attempted to commit vile actions; yet in the court of conscience and by the measures of religion the matter is unchangeable.

§ 14. There are some other ways of imperfect acts, which are to be regulated by the proportion of these measures. 1) He that kills a child in his mother's womb is as guilty of murder as he that kills a man in the field, if he did equally intend it. In this it is true that the lawyers and physicians distinguish the time of the abortion. If the child was efformed into a human shape it is capital by the laws, but not if it was inform and unshapen. But in order to conscience I perfectly consent to the doctrine of the old Christians, recorded by Tertullian[o], *Etiam conceptum utero, dum adhuc sanguis in hominem*

[o] In apologet. [cap. ix. p. 9 D.] et in exhortat. castit. [cap. xii. p. 524 B.] et de virg. velandis. [cap. xiv. p. 181 B.]

deliberatur, dissolvere non licet. Homicidii festinatio est prohibere nasci. Nec refert natam quis eripiat animam an nascentem disturbet. Homo est, et qui futurus est: etiam fructus omnis jam in semine est. While the blood is in deliberation whether it shall be male or female, it is not lawful to dissolve it; and he that intends to hinder it from life is but a hasty murderer. He is guilty of inferring death who prevents that to have life to which God and nature did design it. But this is owing to the choice and design of the will, for the effect of one is much less than the effect of the other upon many considerations: but if the malice was not less, the difference of the effect makes no diminution.

§ 15. 2) The other case is, "If a man smite his neighbour that he die, he shall surely be put to death[p]," said God to Moses. That is, if he purpose to smite him, though he did not purpose to kill him, but wound him only, he hath sinned unto death. The vulgar Latin reads it, *Qui percusserit hominem volens occidere*, 'he that smites a man, willing to kill him.' But this last clause is neither in the Hebrew nor the Greek. And though it is something less to intend to wound him grievously than to kill him; yet he that willingly gives that wound which he would have do him a mischief, and gives it so that it does give him his death, had a malice so great that it could not well discern between wounds and death. But in this case though it is certain God will judge righteously, and make abatement if there be any cause; yet in human laws, and in the measures of his own repentance he will not and ought not to find gentle sentences, but the whole perfect event will be imputed to the imperfect act of his will. For it was too much that he was willing to do any mischief; and *Ex toto noluisse debet qui imprudentia defenditur*, said Seneca: he cannot pretend that the evil event was against his will, when it is certain he did perfectly consent to a great part of it.

RULE IV.

AN INVOLUNTARY EFFECT PROCEEDING FROM A VOLUNTARY CAUSE IS IMPUTED TO THE AGENT, AS IF IT WERE VOLUNTARY AND DIRECTLY CHOSEN.

§ 1. He that is husband of the wife is justly presumed to be the father of the child, and he that chooses the cause must own all those which are the effects and proper productions of it; and all causes are not immediate and contiguous to the effect. He that drinks himself drunk that without fear and shame he may fornicate, though when he fornicates he hath not the use of reason any more than of his modesty, and cannot deliberate, and therefore cannot choose, yet he is guilty of fornication as well as drunkenness. He that eats high

[p] [Exod. xxi. 12.]

and drinks deep that in his sleep he may procure pollution, is guilty of that uncleanness, as well as of that excess, which S. Paul[q] intimates in those words, "Make not provision for the flesh to fulfil the lusts thereof;" that is, what you design as the purpose of your intemperance is your crime, though it be a natural effect when things are by your choice so disposed: and when our blessed Saviour[r] commanded us to "take heed of surfeiting and drunkenness," He forewarned us as well of the effect as of the cause; for κραιπάλη παρὰ τὸ κάρα πάλλειν, 'surfeiting hath its name from the event,' because it causes dissolutions of the nerves and dilutions of the brain, and consequently palsies, which when we have contracted, we are by our own fault disabled in the service of God. Κραιπάλη ἀπὸ προτεραίας· ἀπὸ χθιζῆς οἰνοποσίας[s], 'surfeiting is the product of yesterday's debauchery:' and since the effect is also forbidden, he that chooses it by delighting in the cause, chooses also what is forbidden, and therefore that which will be imputed to him. But this I have largely proved upon a distinct account[t], by making it appear that even a vicious habit, the facility and promptness to sin, is an aversion from God, and makes us hateful by a malignity distinct from that which is inherent in all the single actions. Thus he sins that swears by custom, though he have no advertency to what he says, and knows nothing of it: he chose those actions which introduced the habit, and he can derive no impunity from his first crime: and he that is the greatest sinner can never come to that state of things that he shall take God's name in vain and yet be held guiltless.

§ 2. But this rule is to be understood with these cautions.

1) The involuntary effect is imputed to the voluntary cause, if that effect was foreseen, or if it was designed, though when it be acted the foolish man knows but little of it, no more than a beast does of his own acts of pleasure, which he perceives by sense, but does not by counsel enter into it. Of this there is no question, because he put his hand to a hook of iron, and that being fastened upon the rich vessels in the house draws forth what the man, it may be, knows not to be there; but his hand willingly moved the iron hook, and therefore his hand and his will is the thief.

§ 3. 2) The involuntary effect is not imputed to the voluntary cause, if after it is chosen by the will in one act, it is revoked by another before the mischief be effected. Thus if Mævius shoot an arrow to kill Paternus, and in the instant of its egression *nollet factum*, repents of the intended evil, that mischief which is then done shall not be imputed to him. This indeed is generally said both by the divines and lawyers; but it hath no effect at all that is material and considerable, save only this, that the repentance does wash away the guilt: but in true speaking the whole guilt was con-

[q] [Rom. xiii. 14.]
[r] [Luke xxi. 34.]
[s] [Schol. in Aristoph. Acharn. 277: cf. vol. iii. p. 51.]
[t] 'Unum necessar.,' cap. 5. [vol. vii. p. 165.]

tracted, because the act of the will was completed up to action and execution, beyond which there can be no intention of the evil; but then the effect is therefore not imputed, because the cause also is pardoned by the means of repentance, and so it is even after the mischief is done. He that by repentance recalls the mischief, shall by pardon be cleared from guiltiness, whether that repentance be before or after.

§ 4. 3) But that which we can rely upon in this particular, and of which great use is to be made, is this, that though all the evil events which are foreseen, or ought to have been considered, are imputed even then when they are not in our power, to him who willingly brought in the cause of those evils; yet whatsoever was not foreseen, and therefore not designed, nor yet chosen, by consequence and implication is not imputed to him that brought that foolish necessity upon himself. Consonant to this is the doctrine of S. Austin[u], *Culpandus est Loth non quantum incestus in ebrietate admissus, sed quantum ebrietas meretur*, 'Lot was answerable for his drunkenness, but not for his incest caused by his drunkenness, which he foresaw not and designed not.' But this case also suffers alteration. For if Lot had been warned of the evils of his first night's drunkenness, and yet would be drunk the next night, he is not so innocent of the effect, the incest lies nearer to him. Only if after that monition he suspected as little as at first, he was not indeed guilty of the incest directly, but of a more intolerable drunkenness and a careless spirit, who by the first sad event did not consider and was not affrighted from the intolerable cause. But thus if a servant throws himself into a pit, and breaks a leg or an arm that he might not work, his not working is as much imputed to him as his uncharitable injury to himself: but if afterwards, as Pyrrho did, he see his master fallen into a ditch, and by reason of that first fall he cannot help his master out, that is not to be imputed to him; for he willed it not, it was not included virtually in any act of his will or understanding. And thus it is also in the divine judgments, which if we procure by our own vilenesses, all that impotency and disability of obeying God in external religion, which is consequent to the suffering that judgment which himself procured, and by which he is fallen sick or mad or lame, is not imputed to him; because to make himself guilty of a thing it is not sufficient that he be the meritorious cause of that which procured it, but he must be the voluntary and discerning cause. That evil of which a man is only the meritorious cause depends upon another will besides his own, and is indeed an effect deserved by him, but not willingly consented to, but very much against him; and therefore can never be imputed to him to any other purpose but to upbraid his infelicity, who justly suffers what he would not foresee, and now cannot avoid.

§ 5. 4) When a man falls into a state or condition in which he

[u] Lib. xxii. contr. Faust., cap. 44. [tom. viii. p. 386.]

cannot choose, those acts which are done in that state are imputed to him, if they be such acts to which no new consent is required, but that it be sufficient that he do not dissent: and if those acts be consonant to his former will, all such effects are imputed to the will. Thus if Titius being a catechumen desired to be baptized, and then falls into madness, or stupidity, or a lethargy, he is capable of being baptized, because nothing is in some persons required but a mere susceptibility, and that there be no just impediment; the grace of the sacrament being so mere a favour, that it is the first grace to which nothing on our parts is previous but that all impediments be removed. Since therefore in this a man is passive, his present indisposition of making new acts of election renders him not incapable of receiving a favour; always provided that there was in him no indisposition and impediment before his present accident, but that he did desire it and was capable before: that volition hath the same effect in the present state of madness or stupidity as it could have if he had been well. But when this comes to be reduced to practice, I know of no material change it works upon the man in case he dies in that sad affliction, but what was by the mercies of God laid up for him upon the account of his own goodness and the man's former desire. But if he does live, that susception of the sacrament of baptism is sufficient for him for his whole life, and the days of his recovery; that is, all that which he could be bound to in the susception is performed effectively in that state in which he could not presently choose. But I shall resume this consideration and enquiry upon occasion of something to be explicated in the sixth rule of this chapter.

§ 6. 5) But in matter of punishment the case is something different. The case is this; Mizaldus a Florentine smote an officer of the great duke in the court, and apprehending that he was in great danger of suffering a great punishment, grew sad and impatient, and at last distracted: the question upon the case is,

QUESTION.

Whether or no Mizaldus may, being mad, be punished by death, or the abscission of his hand, for a fact he did in his health and the days of understanding. To this the answers are various by reason of the several cases that may arise.

§ 7. 1) If the punishment cannot be inflicted without legal process, trial, conviction and sentence, the mad man cannot be punished, because he is not capable of passing through the solemnities of law: but if the sentence was passed before his madness, then the evil may be inflicted, that is, it is just if it be; and it may be done unless some other consideration interpose to hinder it.

§ 8. 2) In punishments where no judicial process is required, a man that is mad may be punished for what he did when he was

sober. If a son strikes his father, and then falls mad, the father may disinherit him for all his madness[v], because the father may proceed summarily and upon sense of the crime; and he that by his own voluntary act did deserve it, is not by madness made uncapable of the punishment, to which in this case nothing but a passiveness is required.

§ 9. 3) This also holds in cases of punishments *ipso facto* incurred, that is, which a man is fallen into as soon as ever the crime is committed. And of this there is a double reason; the one is because the punishment is actually incurred before he is actually mad, for the very crime itself is to him as a judge and sentence, and the sanction of the law is all the solemnity: and that's the other reason, consequent to the former; in this case there needs no process, and therefore the sinner's indisposition cannot make him uncapable of passing into punishment.

§ 10. 4) In punishments emendatory, that is, such which besides the exemplar justice, intend to reform the criminal, he that is fallen into madness ought not to suffer them, whether the sentence be to be passed by the law or by the judge, whether it be solemn or summary, whether it be passed before his calamity or after. The reason of this is plain, because such punishments being in order to an end which cannot be acquired, are wholly to no purpose, and therefore are tyrannical and unreasonable; the man is not capable of amendment, and therefore not of such punishments which are emendatory.

§ 11. But after all this, the moderation of charity in christian judicatories is such, as that they refuse to inflict corporal penalties on distracted people, it being enough that they are already but too miserable.

> Solus te jam præstare potest
> Furor insontem: proxima puris
> Sors est manibus, nescire nefas[x].

He that knows not what he does, or what he hath done, is next to him that is innocent. And when the man is civilly dead, it is to little purpose to make him sink further under the civil sword. That's a dreadful justice and security that would kill a man twice over. Only when any thing of example, or public interest, or detestation of the fact is concerned, it may be done according to the former measures, and for the present considerations; just as it is in some cases lawful to punish a man after he is dead, by denying him an honourable or christian sepulture: where although there be something particular in the case, the nature of this punishment being such, that because we do not bury them before they be dead, this evil must be inflicted upon him that feels it not, or not at all be inflicted; yet indeed it is true that it ought not at all to be inflicted upon any direct account of justice, but upon collateral considerations, as for

[v] Bartol. in l. 'Ex facto,' in princip. ff. de vulg. et pupilla substit. [in digest. lib. xxviii. tit. 6. tom. ii. p. 378. fol. Par. 1562.]

[x] Senec. Herc. Fur. [act. iv. 1097.]

terror and exemplarity; and so it may be in the case of the present question.

SECT. II.—OF THE DIMINUTIONS OF VOLUNTARY ACTIONS: AND FIRST OF IGNORANCE, AND ITS INFLUENCE INTO THE MORALITY OF HUMAN ACTIONS.

RULE V.

NOTHING IS GOOD OR BAD BUT WHAT WE KNOW, OR CONCERNING WHICH WE CAN DELIBERATE.

§ 1. THE great measures of morality are, choose the good, and eschew the evil: before these can be chosen or avoided they must be considered and discerned. And therefore those things concerning which there can be no deliberation are neither morally good nor bad, and those persons who cannot deliberate, can neither be virtuous nor vicious; but the things may be lawful, and the persons be innocent, but both of them negatively, that is, the things are not evil, and the persons are not criminal. And therefore S. Paul[y] celebrating the immense love of God to mankind, says that "God would have all men to be saved;" and in order to this he adds, He would have all men "come to the knowledge of the truth," as knowing this to be the only way: no man can be saved unless he knows saving truth, but every man may be saved unless it be his own fault; and therefore there is to every man revealed so much truth as is sufficient to his salvation. It may be this saving truth is revealed by degrees, and so that he who hath the first general propositions of nature and reason, and uses them well, shall have more, even so much as is necessary until he comes to all-sufficient knowledge. "He that comes to God," saith S. Paul[z], "must believe that God is, and that He is a rewarder of them that diligently seek Him." This is the gentiles' creed, but such as at first will be sufficient to bring them unto God, whither when they are come He will give them His holy Spirit, and teach them whatsoever is yet necessary. I am not here to dispute what is likely to be the condition of heathens in the other world: it concerns not us, it is not a case of conscience: but we are sure that all men have the law of God written in their hearts; that God is so manifested in the creatures, and so communicates Himself to mankind in benefits and blessings, that no man hath just cause to say he knows not God. We see also that the heathens are not fools, that they understand arts and sciences, that they discourse rarely well of the works of God, of good and evil, of punishment and reward: and it were strange that it should be impossible for them to know what is necessary, and stranger yet that God should exact that of them which

[y] [1 Tim. ii. 4.] [z] [Heb. ii. 6.]

is not possible for them to know. But yet on the other side, we see infinite numbers of Christians that know very little of God, and very many for whom there is no course taken that they should know Him: and what shall be the event of these things is hard to tell. But it is very certain that without a man's own fault, no man shall eternally perish: and therefore it is also certain that every man that will use what diligence he can and ought in his circumstances, he shall know all that in his circumstances is necessary; and therefore Justin Martyr[a] said well, *voluntate ignorare illos, qui res ad cognitionem ducentes habent, nec de scientia laborant.* Every man hath enough of knowledge to make him good if he please: and it is infinitely culpable and criminal that men by their industry shall become so wise in the affairs of the world, and so ignorant in that which is their eternal interest; it is because they love it not.

Non aurum in viridi quæritis arbore,
Nec vite gemmas carpitis:
Non altis laqueos montibus abditis
Ut pisce ditetis dapes[b].

No man looks for emeralds in a tree, nor cuts his vines hoping that they will bleed rubies or weep pearls. Which of all the heathens or Christians ever went to take goats in the Tyrrhene waters, or looked for crystal in a furnace? Many know what pits have the best oysters, and where the fattest tortoise feeds.

Sed quonam lateat quod cupiunt bonum
Nescire cæci sustinent;
Et quod stelliferum trans abiit polum
Tellure demersi petunt[c]:

And yet they look for immortality in money, and dig deep into the earth, hoping there to find that blessedness which their reason tells them dwells beyond the stars. Men have enough of reason and law put into their hearts by which they read the will of God; and therefore no man can in the universal lines and measures of salvation pretend ignorance: I am sure we cannot, and that is all that concerns us. And therefore ignorance in the law of God, in that which concerns our necessary duty, is so far from excusing any thing it causes, that itself is very criminal. *Non est levius omnino nescire quod liceat, quam facere aliquid quod scias non licere*[d], 'to do some things that we know to be unlawful, is not so great a crime as to be wholly ignorant of what is and what is not lawful.' So that since the great end why God hath given us liberty and election, reason and understanding, is that by these we should serve Him and partake of His felicities, it follows that in all that is of necessity to our salvation God is not wanting to give us sufficient notice; and of good and evil in general every man that hath the use of reason does or may understand the rules and differences.

[a] [Quæst. cxl. ad orthod., p. 503.]
[b] Boeth., lib. iii. de consol. philos. [metr. 8.]
[c] [ibid.]
[d] Seneca.

§ 2. But if we descend to particular rules and laws, the case is different. So Gregory Nyssen said[e], *Universalium secundum electionem non esse involuntariam ignorantiam, sed particularium;* 'a man cannot against his will be ignorant of the universal precepts that concern our life eternal and election, but of particulars a man may.' That a man must not oppress his brother by cruel or crafty bargains every man ought to know: but there are many that do not know whether all usury be a cruelty or oppression, or in any sense criminal. But concerning these things we may better take an estimate by the following measures.

OF WHAT THINGS A MAN MAY OR MAY NOT BE INNOCENTLY IGNORANT.

§ 3. 1) No man can be innocently ignorant of that which all the nations of the world have ever believed and publicly professed; as that there is a God; that God is good, and just, and true; that He is to be worshipped; that we must do no more wrong than we are willing to receive or suffer. Because these things and the like are so conveyed to us in our creation that we know them without an external teacher; and yet they are so every where taught, that we cannot but know them, if we never consulted with our natural reason.

§ 4. 2) No Christian can be innocently ignorant of that which the catholic church teaches to be necessary to salvation. The reason of this is, because every one that knows any thing of God, and of heaven and hell, as every Christian is supposed to do, cannot but know it is necessary he learn something or other in order to it; and if any thing, then certainly that which is necessary: and of that nothing can so well judge, nothing can teach so readily as the whole church; for if the whole church teaches it as necessary, then it is taught everywhere, and at all times, and therefore to be ignorant of such things can never be supposed innocent.

§ 5. 3) Of that which is by several churches and societies of wise and good men disputed, a man may be innocently ignorant; for there is supposed difficulty, and obscurity, and every degree of these is the greatest indication that there is not of them any absolute necessity. What God hath made necessary to be known He hath given sufficient means by which it can be known[f]. But because every man cannot dispute, and of them that can, very many do it to very little purpose, and they had better let it alone, and by disputing men often make more intrigues, but seldom more manifestations of what is obscure; it is certain that which cannot be known but with some difficulty and more uncertainty, may be unknown with very much innocence.

[e] Lib. v. de philosoph., cap. 2. [al. Nemes. de nat. hom., cap. 31. in Galland. bibl. patr., tom. vii. p. 403 E.]

[f] [See 'Liberty of prophesying,' § 3. —vol. v. p. 409 sqq.]

§ 6. 4) Those things which do not concern good life, and the necessities of this world and of the other, are not of necessity to be known by every one; because there is beyond these no common and universal necessity. But beyond these

§ 7. 5) Whatsoever concerns every man's duty in special, to which he is specially obliged, of that he cannot innocently be ignorant, because he hath brought upon himself a special obligation of a new duty, to which he must take care that sufficient aids and notices be procured. Thus must a bishop understand not only the articles of faith, but the rules of manners, not only for himself, but for those which are under his charge; he must be able to instruct others in the mysteries of religion, and to convince the gainsayers; that is, he must have knowledge sufficient to do what God requires of him, and what himself hath undertaken. But then as there is in the duty of every Christian, so there is in the charge of every office, some things that are primely necessary, some things that are only useful, and some for ornament, and some for excellency and perfection. So that as of every Christian so much knowledge is required, that he be not ignorant of what is necessary for his great calling, but of other things less necessary there is less knowledge required; so it is in every special calling. For although a bishop must know how to teach sound doctrine, and to reprove evil manners, and if he knows not these things his ignorance is criminal; yet a bishop may be innocent and laudable though he be not so learned as S. Gregory Nyssen. Valerius the bishop of Hippo was a good man and a good bishop, yet he was not so instructed and able as his successor S. Austin; and Nectarius of Constantinople was accounted a good patriarch, yet he was very far short of S. Chrysostom. Of what is more than of simple necessity, some may be innocently ignorant, but yet very few are. Because God hath not confined His providence and His spirit to the ministry only of what is merely and indispensably necessary: and therefore when God hath largely dispensed and opened the treasures of His wisdom and heavenly notices, we should do well not to content ourselves with so much only as will keep us from perishing. Therefore that the conscience may be directed how far its obligation of enquiry does extend, and may be at peace when it enquires wisely whether the duty be done, these are the best measures whereby we can take account.

WHAT DILIGENCE IS NECESSARY THAT OUR IGNORANCE MAY BE INNOCENT.

§ 8. 1) Our enquiry after things necessary must have no abatement or diminution, nothing less than that it be so great and diligent as that the work be done. Because whatsoever is necessary is sufficiently communicated, and without that we cannot do our duty, or receive the felicity designed for us; and in that where God's part

is done, if the event answer not, it is because we have not done our part, and then we are not innocent. So that in these enquiries we are no otherwise to make a judgment of our diligence than by the event: whatsoever is less than that is less than duty.

[1]§ 9. 2) But in things not absolutely necessary, such which are of conveniency and ornament, of advantage and perfection, it is certain we are not tied to all diligence that is naturally possible: and the reason is, because these things are not simply necessary, and therefore not of necessity to be acquired by all means. Add to this, if a man were bound to use all diligence to acquire all notices that can be useful to him in his general or in his special calling, he should fall under a perpetual rack of conscience. For considering that a man's life were not sufficient to do this in some callings, and it is necessary in this world that a man do many things more than the works of his office, he could never be suffered to attend to any necessity but what is mere and indispensable and indivisible, and never use any divertisement, recreation, variety or ease, but he must first be tied upon the wheel, and feel the pains of a doubting and tormenting conscience, by reason of the impossibility of knowing whether we have done all that we can.

§ 10. 3) In acquiring notices concerning doing any work with advantages a 'moral diligence' is necessary: for he that stops at the gate of simple necessity hath some love to himself, and great dread of God, but no love to Him; for love cannot consist with a resolution of knowing no more than we must needs; to get so much and no more will well enough serve the ends and the design of fear, but not of love; and therefore although the man that does so is innocent as long as he is in that state, and as long as that state is acceptable; yet because the state of fear is but the state of infancy and imperfection, it must proceed further, or be imperfect for ever; that state will not be accepted long. For if a man does his duty in that state, he shall be enabled to go further; and then he must, or else he sins by despising the Spirit of grace. But if he does not do his duty in the first state, then he must not in that state of carelessness and neglect of using moral diligence pretend that he is innocent. A man that hath been blessed in his first attempts must still follow the method and economy of the divine Spirit; that is, as God increases in aids, so the man must increase in diligence and labour, and must use what means are before him to do still better and better.

§ 11. 4) In acquiring notices not simply necessary, a moral diligence is sufficient. This is an immediate consequent of the second rule, and therefore needs not particular confirmation, but explication rather.

Therefore by 'moral diligence' is to be understood such a diligence in acquiring notices as can α) consist with our other affairs, and the requisites of our calling and necessities; β) such as is usual by ourselves in the obtaining things which we value; γ) such which is

allowed by wise men, such which a spiritual guide will approve; δ) and such as we ourselves do perceive to be the effects of a real desire. For there ought to be nothing of scruple or vexation in the acts of this diligence, nor in the enquiries concerning it. And therefore if we are sure we desire to know what we can, and do towards it such like things as we do in the purchase of other things which we greatly value, we may be at peace. For this thing does not consist in an indivisible point, it is not just thus much, neither more nor less; but it is more or less according as our love is and our leisure, our opportunities and abilities: and if we cannot judge concerning ourselves so well as to rest in peace, let us ask a spiritual guide, having first declared to him the narrative of our life and actions whereby he shall be enabled to make a judgment.

WHAT IS A PROBABLE IGNORANCE?

§ 12. Upon this account we can also give the measures and definitions of a probable ignorance, that is, such an ignorance which is next to an invincible or an irremediable ignorance: this the schools call probable. For as the invincible ignorance is a mere nescience, and is either of such things which we are not bound to know, because God requires them of no man; or of such things which we cannot know, because we never heard of them, and are not taught sufficiently, and so God will not require them of us: so next to this stands the probable ignorance; that is, when the things are propounded to be known, and can be known if we would use all our natural and possible diligence; but yet because God hath not placed them in a necessary order to salvation, He hath not tied us to use all our natural diligence, but some diligence He does require, which when we have used, and yet miss, the ignorance is probable. Now when that is so, we shall learn by the proportions to the description of the parts and requisites of a moral diligence, and by these following measures.

§ 13. 1) Then our ignorance is probable, when we enter upon the action without temerity, and yet without doubt or trepidation; that is, when our address is with consideration, but we find no reluctancy against the action, nor remorse after it. For then it must be that we have faith, and do it with a good mind, not against our conscience; and yet having no fierceness of passion or fancy, and a mind wary enough to discern any objection that is near, it will be very probable that there is none at all but what stands a great way off, and therefore far enough from disturbing the innocence of the action.

§ 14. 2) But this is to be understood only in the ordinary accidents and traverses of our lives. But if it be in matters of great concernment, such as are above our ordinary employments, as if it be in the actions and duties of an eminent office, it is not sufficient that

we have no regret or remorse, but we must have an actual consideration, a plain perceived deliberation and counsel, and then no regret. It is not here enough that we have nothing against it, but we must have something for it, because in such persons and in such accidents the process ought to be more than ordinary; that as there are greater abilities required to the performance of that office, so there may be a proper use and exercise of those abilities. And there is in this a great evidence of truth. For in ordinary things, it is very often so that they are well enough if they have not evidently any evil in them. But in the actions of public employments things are not so indifferent; they do hurt unless they do good, they are scandalous if they be suspicious; they are designed also to do benefit, and if they do not they cannot be justified, and therefore they must be looked on with an actual consideration: in which state of things it is certain that every thing will occur that is obvious to be considered; and what is not obvious to such persons is indeed very difficult, and may well be supposed to leave a probable and very excusable ignorance.

§ 15. 3) This also is to be extended to the case of confident asseverations, and confirming any proposition with an oath, in which no man can have a probable ignorance, but he that hath used a diligence of enquiry so great as to give confidence great enough to an oath, which must be of a thing so sure, that nothing can be a cause of doubt, unless some secret and undiscerned thing, to which a great and proportionable diligence hath not arrived and made discovery, do accidentally intervene. No man must swear a thing is so, and yet at last say, I did *bona fide* suppose it so: but I examined it, I searched as well as I could, I entered into all the corners of it, I had great reasons to believe, I had fair assurances it was so, and I every day am assured of many things of which I had less testimony. If beyond this any thing escapes him, the ignorance is probable and excusable. But the rule is the same as at first: he is sufficiently and innocently confident, who hath no distrust, and upon enquiry finds no cause of distrust; always provided that the enquiry be in proportion to the dignity, and difficulty, and duty of the occasion and subject matter.

§ 16. By the use of these premisses it will be easy to determine Plato's case of conscience which he propounded to Hippias the sophister[f], Whether is the better or worse, he that sins willingly, or he that sins by folly and ignorance? of them that wrestle, whether is the more inglorious, he that falls willingly, or he that is thrown in despite of himself and all his strength? whether foot is better, that which halts upon design, or that which halts with lameness? whether were it better for a man to have a fool or a knave to his servant? But this discourse of Plato concerns arts only and sciences. But Hippias answered well, it was not so in virtues; the differences of which Plato did not seem to discern, but Aristotle[g] afterwards very

[f] Lib. de mendacio. [Hipp. min. § xvi. tom. iii. p. 19. sqq.]

[g] Lib. vi. ethic., cap. 5. [tom. ii. p. 1140.]

well explicated. The sense of which in order to the purpose of the present rule is well expressed by Seneca[h]; *Vis scire quam dissimilis sit aliarum artium conditio et hujus? In illis excusatius est voluntate peccare quam (casu) ignorantia: in hac maxime culpa est, sponte delinquere:* if a grammarian speaks a solecism on purpose, he blushes not; but if ignorantly, he hath reason to be ashamed. If the physician knows not what his patient ails, it is more shame to him than if he on purpose names a wrong disease. *At in hac arte vivendi, turpior volentium culpa est*[i]; 'but in manners to err willingly is the more intolerable.' The reason of these things is plain, which who please may read in Gifanius[k] the interpreter of Aristotle, and Marsilius Ficinus[l] the expositor of Plato: for indeed it is evident that to moral actions the rectitude of the appetite is required, not so to arts and sciences and the virtues intellectual. It is enough to art that the work be well done, though with what mind it matters not as to that: and when the Italian painter[m], who was to depict a crucifix, hired a slave to be tied to a cross, that he might lively represent a body so hanging, and so extended, did afterward stab him to the heart, that he might see and perceive every posture and accent and

[h] [Epist. xcv. tom. ii. p. 457.]

[i] [ibid.]

[k] In lib. vi. eth., c. 5. [p. 475. 8vo. Franc. 1608.]

[l] In Hippia minor. [tom. ii. p. 267. fol. Par. 1641.]

[m] [This story, popularly related of Michael Angelo Buonarroti, is not noticed by his contemporary biographers Vasari or Condivi, and rejected by D' Argenville ('Vies des peintres,' tom. i. p. 136). Another version of it, that he kept a slave suspended so long upon the cross that he expired, is mentioned as 'ridicolosa favola' by Padre Della Valle, the editor of Vasari (vol. x. p. 279. 8vo. Siena 1793). Seneca has chosen for one of his rhetorical declamations (lib. v. controv. 34.) a similar charge made against Parrhasius, that he had tortured an old slave to serve as his model for a Prometheus Vinctus; a fiction which Schott (in loc.) and Carlo Dati ('Vite dei pittori antichi,' p. 122. 8vo. Padova 1821.) illustrate by the present parallel instance.

A crucifix by Michael Angelo, traditionally connected with the legend, is described as in the Borghese palace at Rome by the Richardsons ('Statues &c. in Italy,' p. 183. 8vo. Lond. 1722). Dr. Thomas Young, conceiving the work of art referred to as a painting, has made it the subject of the following lines:

"On Michael Angelo's famous piece of the Crucifixion, who is said to have stabbed a person that he might draw it more naturally.

Whilst his Redeemer on his canvas dies,
Stabb'd at his feet his brother weltering lies:
The daring artist, cruelly serene,
Views the pale cheek, and the distorted mien;
He drains off life by drops, and deaf to cries,
Examines every spirit as it flies:
He studies torment, dives in mortal woe,
To rouse up every pang repeats his blow;
Each rising agony, each dreadful grace,
Yet warm transplanting to his Saviour's face.
Oh glorious theft! oh nobly wicked draught!
With its full charge of death each feature fraught:
Such wondrous force the magic colours boast,
From his own skill he starts in horror lost.

Though the report was propagated without the least truth, it may be sufficient ground to justify a poetical fancy's enlarging on it."—English poets, vol. xiii. p. 413. 8vo. Lond. 1810.]

little convulsion of a dying man, he was very much the worse man for it, but no whit the worse painter, as appeared by the incomparable excellency of that piece; and the principles of art cannot be corrupted with the evil manners of the man: but because evil desires pollute the manners, the will is to be taken care of, as the principle of all morality. To which we may add that he who in arts errs willingly, can mend it when he please; but so cannot he that errs ignorantly. Ignorance is the only disparagement of his art, and malice is the only disparagement of our manners.

§ 17. But this, though disputed to little purpose amongst the philosophers, may be of good use in cases of conscience. Cardinal Campegius[n] having wickedly said to the senate at Norimberg, that it was worse for a priest to marry than to fornicate, offered in justification of it a reason that could less be justified. For (saith he) the priest that fornicates knows he does amiss, and therefore may in time repent; but the priest that marries thinks he does well, and therefore will never change his mind, he will never repent. It is true, he needs not, because he believes he does well; and he is not deceived. But suppose he were deceived, and abused by error, what man before him was ever so impious as to say that he that knows he does evil is in a better condition than he that errs with a good mind, and supposes he does very well? For the present, the state is infinitely different: and for the time to come, which is the more likely to obtain mercy, he that does a thing ignorantly, or he that does it maliciously, we shall not need to appeal any whither but to all the notices of virtue and vice which are in mankind.

§ 18. Indeed there are some sins of ignorance, that is, such which are subjected in the understanding, which are worse than some sins of malice, or such which are subjected wholly in the will and the faculties which obey it. Thus to be ignorant of the fundamental articles of faith is a worse state of things than to have committed an act of gluttony, or to have entertained a wanton thought, or to have omitted divine service upon a festival. The Jews had an opinion that thoughts were free, and God did not require them of us with severity; but a thought against faith, that was highly criminal. *Cogitationem pravam Deus non habet vice facti, nisi concepta fuerit in Dei fidem atque religionem,* said R. David Kimchi[o]; meaning that no sin was greater than heresy, or an error in faith. But the reason of this is, not only because the effect of heresy is like the plague, infectious and disseminative; but because by how much the articles of faith are more necessary to be believed, by so much is the ignorance of them more criminal, and more voluntary, and therefore less excusable. But even in matters of faith, where there is less of malice or wilful negligence ingredient into the ignorance of them, there the crime is less than any thing else, be the instance what it will. But this will be more explicit in the sequel.

[n] Sleidan. lib. iv. [fol. 29 a. fol. Gen. 1563.] [o] In psal. lxvi. v. 18. [p. 283.]

RULE VI.

IGNORANCE DOES ALWAYS EXCUSE THE FACT, OR DIMINISH THE MALIGNITY OF IT, OR CHANGE THE KIND AND NATURE OF THE SIN.

§ 1. IGNORANCE according to its several capacities, and the several methods of art and ways of speaking, hath several divisions. But all are reducible to this in order to conscience. Ignorance is either voluntary or involuntary. It is vincible or invincible, that is, it can be helped or it can not. It is the cause of an action, or it only goes along with it. And of these several ignorances there are many degrees, but no more kinds that are here fit to be considered.

§ 2. 1) The first sort of ignorance, which is involuntary, invincible, and antecedent, that is, is the cause of an action, so that the thing would not be done but by that ignorance, does certainly make the action also itself involuntary, and consequently not criminal. In this sense is that of the law[p], *Errantis nulla voluntas, nullus consensus,* 'they that know nothing of it consent not.' This is meant of ignorance that is involuntary in all regards, that is, such as is neither chosen directly nor indirectly, but is involuntary both in the effect and in the cause. Thus what fools and madmen and infants do is not at all imputed to them, because they have no understanding to discern good from evil, and therefore their appetite is not depraved or malicious which part soever they take. Ἐπειδὴ γὰρ ἀπὸ διαθέσεως ἡ ὕβρις συνίσταται, ἀκολούθως λέγομεν τὸν μαινόμενον, καὶ τὸν νήπιον, εἰ καὶ ὠθήσουσί τινα, ἢ διὰ λόγων ὑβρίσουσι, μὴ κατέχεσθαι, διότι οὐ δοκοῦσι διάθεσιν ἔχειν ὑβριζόντος μὴ αἰσθανόμενοι, saith the law, according to the interpretation of the Greeks[q]: 'injury proceeds from the affection, and consequently we say that a mad-man or an infant if they strike or reproach any one they are not criminal, they have done no injury because they have perceived it not.' *Nec reputantur infantiæ anni qui sensu carent,* saith Pliny[r]; 'the years of infancy come not under the notice of laws and judges, of right or wrong, for they have no reason, that is, they use none.' So Galen[s], Τὸ μὲν δὴ μὴ χρῆσθαι λογισμῷ μήτε τὰ θηρία, μήτε τὰ βρέφη, καὶ πρὸς τοὺς περὶ τὸν Χρύσιππον ὡμολόγηται· 'all the scholars of Chrysippus constantly affirm that beasts and babies have no use of reason.' And Jamblichus[t] supposed that the rational soul was not infused into children before the tenth year of their age. But that is more reasonable which almost all wise men (excepting the Stoics) affirm, and is thus expressed by Gregory Nyssen[u], and his contemporary Ne-

[p] L. 9. ff. de jur. et fact. ignor. [vid. lib. xxii. tit. 6.] et l. 20. ff. de aqua et aquæ pluvi. [lib. xxxix. tit. 3.]

[q] L. 3. § 2. ff. de injur. [Basilic., lib. lx. tit. 21. tom. vii. p. 480 D.]

[r] [Hist. nat., lib. vii. cap. 51. § 2.]

[s] De Hippocrat. et Platon. placit. [lib. v. cap. 7. § 173. tom. v. p. 484.]

[t] Apud Stobæum in Physicis eclogis. [vid. lib. i. cap. 52. tom. i. p. 911.]

[u] De anima. [tom. ii. p. 106 A.]

mesius[x] in the very same words; Εἰ γὰρ καὶ κομιδῇ νέοις οὖσι τοῖς βρέφεσιν ἡ ἄλογος μόνη κίνησις πρόσεστιν, ἀλλὰ ψυχὴν λογικὴν φαμὲν ἔχειν αὐτὰ, ἐπειδήπερ αὐξανόμενα καὶ τὴν λογικὴν ἀναδείκνυσιν ἐνέργειαν, 'although in infants there is no action or motion of reason, yet we say that they have a reasonable soul, for they manifest the use of it when they are growing up.'

§ 3. But this occasions a difficulty in this subject. For we see the rational soul exercising its operations, in some sooner, in some later; and as the body grows in strength and grandeur, so does the soul in the use of reason and powers of deliberation and choice.

Nam velut infirmo pueri teneroque vagantur
Corpore, sic animi sequitur sententia tenuis.
Inde ubi robustis adolevit viribus ætas,
Consilium quoque majus, et auctior est animi vis[y].

And Hippocrates[z] adds that the soul does always grow, ἀνθρώπου ψυχὴ ἀεὶ φύεται μέχρι θανάτου, 'a man's soul is born every day of a man's life, it always receives some increment.' Now the question is,

How long shall infant ignorance or childishness excuse so far as that the actions they do shall be reckoned neither to virtue nor to vice?

§ 4. To this it will not be possible to give a strict and definite answer, but a rule and a measure may be given. Possidonius said, Μικρὸν μετὰ τὰ πρῶτα καὶ ἀσθενὲς ὑπάρχειν τοῦτο (λογιστικὸν), μέγα δὲ καὶ ἰσχυρὸν ἀποτελεῖσθαι περὶ τὴν τεσσαρεσκαιδεκάετη ἡλικίαν, 'the rational faculty is at first very weak, but it is great and strong about the age of fourteen years:' and Plutarch[a] says that the Stoics affirmed ἄρχεσθαι τελειότητος περὶ τὴν δευτέραν ἑβδομάδα, 'about the second septenary,' or the fourteenth year, 'they begin to be perfect:' but Zeno[b] said that from that year complete, τελειοῦται, 'it is perfect,' that is, as to all capacities of reward and punishment. But in this there was great variety. For some laws would punish boys after twelve years, not before: so the Salic law[c], *Si quis puer infra duodecim annos aliquam culpam commiserit, fredus ei non requiratur*, 'a boy before he is twelve years old committing a fault is not tied to make amends or composition.' Servius[d] upon that of Virgil,

Alter ab undecimo tum me jam ceperat annus,

says the thirteenth year is meant, because that was next to puberty; for, says he, the law judges of maturity not only by years, but by the habit and strength of the body. But though this be less by one year than that of the Stoical account, and more by one year than that of the Salic law; yet we find in the law of the Greeks and

[x] De nat. hom., cap. 2. [Galland. bibl. patr., tom. vii. p. 371 A.]
[y] Lucret., lib. iii. [448.]
[z] [De morb. vulg., lib. vi. tom. iii. p. 607.]
[a] De placit. philos., lib. v. c. 24. [tom. ix. p. 603.]
[b] Diog. Laert. in Zenone. [lib. vii. § 55.]
[c] Tit. xxvi. [§ 9.—Baluz., capit. reg. Franc., tom. i. col. 297.]
[d] In eclog. viii. Virgil. [39.]

Romans that after seven years complete boys were punishable: so the Basilica[e], Michael Attaliates[f], and some others.

§ 5. But this variety was not wholly arbitrary, but it was commonly established upon reason; for the differences were made by the different nature of the crimes, of which boys were not equally capable in every year: but although in every crime some were forwarder than others, yet all were capable of some sooner than of others. Spite and malice comes sooner than lust: and therefore if a boy after seven years old killed a man, he was liable to the *lex Cornelia de sicariis*[g]; but not so if he were a pathic and a correspondent in unnatural lusts, as appears in Matthæus Blastares and Leo[h]; if he were under twelve years he had impunity, *quum ætas ipsa argumento sit nescire eum quid patiatur*, said the emperor, 'his age is an argument of his ignorance, that he knows not what he suffers.' For in these things it was reasonable that Galen said of Hippocrates, *νήπια λέγει τὰ μέχρι ἥβης*, 'infancy is to be reckoned until youth,' or a power of generation: and that was it which I observed before out of Servius, *Bene cum annis jungit habitum corporis: nam et in jure pubertas ex utroque colligitur.* The strength of body must be supposed before you allow them strength of reason, that is, a power to deliberate and choose those sins to which they cannot be tempted before they have natural capacities. But this, I say, relates only to the crime of uncleanness. Now because this was commonly the first of our youthful sins, malice in infancy being prodigious and unnatural, which caused that advice of S. Paul, "In malice be children;" therefore wise men and the laws did usually reckon that age to be the first beginning of their choice as well as of their strength. But this rule is very far from being certain, and therefore S. Austin[i] blames those that do not impute any sins to boys before the age of fourteen; *Merito crederemus*, saith he, *si nulla essent peccata nisi quæ membris genitalibus admittuntur*, 'we might well do so if there were no sins but the sins of lust:' but they can steal sooner, and they can lie, and, as unnatural and as unusual as it is, they can be malicious, some sooner, some later, according to the baseness of their disposition, their pregnancy and education. A Gellius[k] tells that the *decemviri*, who wrote the laws of the twelve tables, *ex cæteris manifestis furibus liberos verberari, addicique jusserunt ei cui factum furtum esset*, 'they caused thieving boys to be whipped and given up to them from whom they had stolen;' and if they cut corn by night and stole it, they were to be chastised by the discretion of the prætor; which also Pliny[l] notes. But then this also is to be added, that even in these things, although they did not esteem them inno-

[e] Lib. lx. tit. 39. [in schol. ad l. 23. tom. vii. p. 698.]

[f] Tit. 71. [Leunclav. Jus. Græco-Rom., tom. ii. p. 64 fin.]

[g] Vide *βασιλικ.* [ubi supra.]

[h] In epit. leg. tit. ult. num. 21. [tit. xxviii. apud Leunclav. ubi supra, p. 128.]

[i] Lib. x. de Genes. ad liter., cap. 13. [tom. iii. part. 1. col. 264 fin.]

[k] Lib. xi. cap. 18. [§ 8.]

[l] Hist. nat., lib. xviii. [cap. 3.]

cent, yet because their understanding was but little, and their choice proportionable, they inflicted but easy punishments; which Theophanes[m] expressed by δι' ἀβηνῶν μαστιγῶσαι, they were 'beaten with thongs,' or rods, or ferulas.

§ 6. From hence we may take an estimate how it is in this affair as to the question and relation of conscience. For then these wise men and wise lawgivers did declare them punishable when they did suppose them criminal; though in the sanction of laws they were to proceed by rule, and determine ὡς ἐπὶ τὸ πολύ, 'as things were most commonly.' But then it is to be considered, that since they being to make a rule could not at all take in extraordinaries, and there would many particulars and hasty instances be passed before it could come to a just measure and regular establishment, we must therefore proceed something otherwise in the court of conscience. For, as Libanius[n], speaking concerning boys, said, Τοῦτο δέ ἐστι τοὔνομα τῆς οὐ πάντα ἀναμαρτήτου καὶ πόρρω μέμψεως ἡλικίας, 'this is not a name of age that cannot sin and cannot be punished.' But Anastasius Sinaita[o] says that sometimes God imputes sins to boys from twelve years old and upwards. But S. Austin confessed the sins of his first years, the peevishness of his infancy, his wrangling with his nurses, his very envying for the nurse's milk and fondnesses: this was indeed a greater piety than reason. But when he was a boy and robbed an orchard, he had reason then to be troubled for it. The sins of children are but little, but they are sins. *Puerorum sensus in qualiacunque verba prorumpens, qui certe ad ea quæ majores sapiunt pene nullus est*[p]. When boys give evil words it is almost nothing. But because it is but almost and comparatively nothing, it is of itself and absolutely something; and we know not at what period of time any child first comes to the use of reason, and therefore neither can we tell when God will impute their follies; and when He does not impute their follies to damnation, it may be He will impute them so far as to cause a sickness or an immature and a hasty death. And therefore parents and tutors can never discharge their duty but by a coercion and strict restraint of children, from the very first beginning of their being capable of laws, of the laws I mean of their parents, and even before that to restrain them from the material parts of any evil, even from evil words which they understand not. For when they once have learnt the sound they will quickly perceive the sense: and although we account their infant malices pretty and sportive, yet because we know not from what an early principle they come, nor how soon God will impute them, nor whither they will tend, nor what impression they leave, we should betimes exercise our legislative; and it is God's great mercy to children that they can under-

[m] L. i. § 'Impuberi,' ff. de senat. Silan. habend. [ad digest., lib. xxix. tit. 5. l. 1. § 33.]

[n] Declamat. xxi. [tom. i. p. 532 D. fol. Par. 1606.]

[o] Quæst. lxxxiv. [p. 486. 4to. Ing. 1617.]

[p] Epist. lvii. [al. clxxxvii. cap. 7. tom. ii. col. 686 B.]

stand fear as soon as they can learn to sin, that their evil company and evil inclinations may not prevent the discipline of the parents, but that God and the good things of His law may get the first possession. And he that will let his children alone till they have φρόνημα στατηρὸν, *animum consilio ac ratione firmatum*[q], 'a fixed and settled judgment,' shall find evil habits fixed and permanent as the foot of a rock, and that good counsel will be too late, too easy a remedy. The sum is this;—so long as they are ignorant, that is, so ignorant that they know not how to deliberate sufficiently to avoid a sin, so long their evil is not imputed, but together with their reason begins their virtue or their vice.

§ 7. 2) The second sort of ignorance is concomitant, that is, such which is really and actually conjoined with the cause of the action, but itself is not the cause; for if the man were not ignorant, he would do the thing nevertheless. Thus the boy that flung a stone at a bird, and hit his cruel stepmother whom he knew not to be there, said he did not then design it, but the stone was well thrown. He that shoots an arrow at a stag and hits his enemy whom he resolved to kill when he could well do it, but knew not at all that he was in the bush, hath an ignorance and a malice at the same time; and here the question is which prevails, the ignorance to excuse, or the malice to condemn. To this I answer, that the ignorance excuses that action, but not that man. He is not a murderer in that shooting, nor in the counsels and deliberation of that action; but for his mind and his malice distinct from that action, he is proportionably guilty. But if the man have no malice to the unfortunate man that is killed, then he is entirely innocent, if his ignorance be innocent. The mind of the man is, and the action is; and if the ignorance were invincible and irremediable, then there is innocence on all parts. *Non consentiunt qui errant*, saith the law[r]. For there is in this concomitant ignorance the same reason as in the antecedent, so far as relates to that event, though not as to that action; the action was indeed voluntary and not procured by ignorance, but that event was; and that being the thing only in question, is to be accounted for just as those actions which are wholly produced by ignorance antecedent.

§ 8. I deny not but the laws of wise republics have principally regarded the mind and counsel of him that sinned, and that therefore the laws of the Romans under their christian princes did profess to follow the law of God in the matter of involuntary murder, and so did the Lombards and the Visigoths; yet sometimes this chance-medley was punished by a lesser punishment: so we find in the laws of the Thuringians, *Qui nolens sed casu quodam hominem vulneraverit vel occiderit, compositionem legitimam solvat.* If a man unwittingly wounds or kills a man, *si telum fugit potius quam fecerit*, as Cicero[s] expresses the instance, if his arrow or weapon slipped from

[q] Cicer. pro Cluent. [cap. 5.]

[r] L. 15. ff. de juris. [? digest. lib. xxii. tit. 6. l. 11.]; l. 'Divus.' ff. ad leg. Cornel. [lib. xlviii. tit. 10. l. 15.]

[s] Lib. v. epist. [? de orat., lib. iii. cap. 39.]

him, rather than was flung, he shall not be put to death; but yet neither shall he wholly escape, but must pay a fine appointed by law. And there is some reason for this. α) Because the law must require the life and blood of every of her citizens from whom it is taken, and the external event, of which she is the most competent judge, must as well as it may be repaired. But β) although it may appear that the event was not intended, yet it cannot so well appear whether the man did use all that diligence and precaution which wise and good men ought to do to prevent mischiefs. And γ) something is to be indulged to the injured person, some consideration had of the grief and loss, and the passion of the relatives of the slain person. And upon these considerations God was pleased to appoint sanctuaries for such persons; which in true speaking is but a just remedy for an unjust calamity, and supposes that something was permitted in favour of the relatives of the unhappy man that died, something, I say, which yet was not always deserved of him that was in danger to suffer it.

§ 9. 3) The third sort of ignorance is the worst, it is that which is vincible and voluntary, that is, procured by the will, is not the prime cause of its actions but the effect, brought in on purpose to make way for an easy mischief with a colour and excuse. Of this there are two noted and discernible degrees; an ignorance crass and dull, and introduced by negligence voluntary and observed more or less; and an ignorance affected, that is, chosen and delighted in, to serve evil purposes. Now concerning these degrees of this criminal ignorance it is true of them both that they bring guilt upon the head of the ignorant, according to their several proportions: but concerning the actions themselves which are acted by men in that state of ignorance and disorder, there is something of particular consideration. For we find our blessed Saviour praying for pardon for His persecutors upon this very inducement: "Father, forgive them, for they know not what they do[t];" that is, they do not now know, for they are blinded and are in a state of ignorance[u]: but that it was vincible and voluntary appears by those words of Christ[x], "If ye were blind, ye had not sinned; but now ye say that you see, therefore your sin remains;" and "having eyes they see not," that is, they would not see, they did it ignorantly, and they would not cure their ignorance, for it was evident that Christ said and did enough infinitely to convince them that He was the Messias. So also S. Paul's[y] ignorance was very culpable, when in zeal and rage he persecuted the church of God; but yet this ignorance lessened the malice of the effect, and disposed him greatly towards pardon. Upon these considerations, it is a worthy enquiry into that effect or influence which proceeds even from a criminal ignorance and undiscerning estate, and what it can operate towards pardon. The question then is, whether what is done by persons that know not what they do, when that disability to know

[t] [Luke xxiii. 34.]
[u] [Acts iii. 17.]
[x] [John ix. 41.]
[y] [1 Tim. i. 13; Gal. i.]

is procured by themselves, either by voluntary negligence or malicious purpose, is a sin as great as if it were done knowingly.

QUESTION.

§ 10. The case is this,—Marcus Bibulus falls frequently into drunkenness; when he is drunk he fights, and fornicates, and steals, and does (as it happens) all manner of impiety. Does his drunkenness excuse, or does it extenuate, or does it aggravate his fault?

§ 11. The Greeks call these things *παροινίας*, that is, *ἡ ἐκ τοῦ οἴνου ὕβρις καὶ οἱαδήποτε ἁμαρτία*, 'contention and every mischief that comes from wine,' saith Hesychius; which when a man hath observed to be consequent to his intemperance, or hath been foretold of it by laws and wise persons, he may justly fall under the sentence not only of drunkenness, but of homicide, or incest, or whatever happens to be the vile daughter of so disgraced a mother. Drunkards are very often proud and quarrelsome: and therefore to that of Solomon[z], "Look not upon the wine when it is red," Rabba[a] saith, *Ne species vinum cujus finis est sanguis*, "look not upon the wine whose end is blood:" and Eustathius[b] saith that the nurses of Bacchus were painted *κατέχουσαι χερσὶν αἱ μὲν ἐγχειρίδια, αἱ δὲ ὄφεις· τοῦτο δὲ πρὸς αἴνιγμα τοῦ καὶ θηριώδεις καὶ φονικοὺς εἶναι τοὺς μεθύοντας*, 'having snakes and daggers in their hands, to shew that drunkards were beastly and bloody.' And therefore if such persons could have impunity, there were no safety for the lives of innocent men, or the chastity of modest women. But they neither have, nor have they reason why they should. *Οἱ γὰρ μεθύοντες καὶ πράξαντές τι κακὸν ἀδικοῦσι· τῆς γὰρ ἀγνοίας αὐτοί εἰσιν αἴτιοι· ἐξῆν γὰρ αὐτοῖς μὴ πίνειν τοσοῦτον, ὥστ' ἀγνοήσαντας τύπτειν τὸν πατέρα*, said Aristotle[c]; 'they that being drunk do evil are guilty of the injury; because they are causes of their own ignorance: for they might have abstained from that excess which caused them ignorantly to smite their father.' Pittacus by a law caused a double punishment to be inflicted upon drunkards, one for the cause, and the other for the evil effect[d]. The same also seems to be the sense of Plato both in his first and in his sixth book of laws: but generally all the interpreters of Aristotle[e], the old philosophers, the Mahometans, and the Christians, and the heathens, are perfectly of this persuasion, that the sins they do in their drunken fit are perfectly to be imputed to them. To this purpose is that of Cicero[f], *Nam qui se propter vinum aut amorem aut*

[z] [Prov. xxiii. 31.]

[a] Gemara Sanhedrin, cap. 8. [p. 286. interp. J. Coch, 4to. Amst. 1629.]

[b] Ad Iliad. ξ. [320. p. 982. fol. Bas. 1560.]

[c] Moral. magn., lib. i. cap. 34. [tom. ii. p. 1195.] et Ethic. ad Nicom. l. iii. c. 2, et 4. [p. 1110.]

[d] Vide etiam Politic. ii. cap. ult. [p. 1274.] et Rhetor. ii. cap. 27. [p. 1402.]

[e] Averroes in lib. iii. ethic., c. 5. [inter opp. Aristot., tom. iii. fol. 36. i. 8vo. Ven. 1562.]

[f] Ad Herennium, lib. ii. [cap. 16.]

iracundiam fugisse rationem dicet, is animi vitio videbitur nescisse, non imprudentia: quare non imprudentia se defendet, sed culpa contaminabit, 'he that with wine or anger or lust loses his reason, cannot pretend ignorance or want of knowledge for his excuse, for by his own fault he is polluted.' And this is the sense of the doctors of the church. S. Basil[g] says drunkenness is *αὐθαίρετος δαίμων· ἑκούσιος μανία,* so S. Chrysostom[h]; *voluntaria insania,* so S. Austin[i]; *αὐθαίρετος μανία,* so Isidore Pelusiot[k]: 'a voluntary devil,' 'a chosen madness,' 'a spontaneous fury.' And the very same words are used by Seneca[l] and Ammianus Marcellinus. And therefore the sinning man must not excuse him by his stupidity, and blame the wine, but himself only; as Callicles in the comedy[m] convinced Dinarchus when he prayed him to give him pardon,

—— Quod animi impos vini vitio fecerim;

he was not himself when he did it, it was his wine, not he. The old man answered him,

Non places: in mutum quippiam confers quod nequit loqui.
Nam vinum si fabulari possit, se defenderet:
Non vinum hominibus moderari sed homines vino solent,
Qui quidem probi sunt: verum qui improbus est, sive subibit,
Sive adeo caret temeto, tamen ab ingenio est improbus.

'Blame not the wine, for wine does not govern a good man, but a good man the wine: but he that is wicked is wicked from within, whether he drinks or no.' By these sayings of wise men we perceive that they held not the drunkard innocent even in those vilenesses which he did in his drunkenness; and their reason was philosophical, the effect from a voluntary cause is to be imputed to the first principle.

§ 12. But commonwealths have another interest to serve; they are to secure the lives and good things of their citizens, and therefore they are by all means to effect what is necessary: and if drunken mischiefs were unpunished, men might pretend drunkenness for an excuse, and make it really to be the warrant of their licentiousness, their rapine, their lust, or their revenge.

Nam si isthuc jus est, ut tu isthuc excusare possies,
Luci claro diripiamus aurum matronis palam;
Post id, si prensi simus, excusemus ebrios
Nos fecesse amoris causa: nimis vile' st vinum atquè amor,
Si ebrio atque amanti impune facere quod lubeat, licet,

said old Euclio to Lyconides[n]. 'If drunkenness may be our excuse, *let us go and drink drunk that we may rob the matrons in the streets.' And Manuel Palæologus*[o] *tells* of one that had a mind to be revenged *and put some affront upon a great man*; and because he durst not *when he was sober, he drank himself into an impudent fierceness,*

[g] [*Hom. in ebriosos, tom. ii. p. 125 E.*]
[h] [*Hom. de resur., tom. ii. p. 459 A.*]
[i] [De sobr., tom. vi. append. col. 227.]
[k] [lib. i. epist. 203. p. 60 C. fol. Par. 1638.]
[l] [Voluntaria insania,—epist. lxxxiii. tom. ii. p. 344.]
[m] Plaut. Trucul., act. iv. scen. 3. [54.]
[n] Aulul., act. iv. scen. 10. [17.]
[o] Orat. iii. [p. 206. 8vo. Bas. 1578.]

that he might first have boldness, and then, as he hoped, impunity. And therefore there may be great reason why the civil laws of any nation should punish the evil effects of drunkenness not only for the evil mother's sake, but for the security of the citizens.

§ 13. But in theology, and in the just estimate of things in order to conscience, we are to speak and to proceed with some little difference. For if it be asked concerning the drunkenness, or concerning the man, there is no peradventure but he is for these evil effects the worse man, and the drunkenness is also the greater crime. The drunkenness makes the injury or the murder less criminal than if it were done with actual reason and choice, but these make the drunkenness more intolerable and criminal. The man in choosing drunkenness with or for these effects is much the worse man; but the crime is the voluntary drunkenness, not the involuntary rage and injury. And this appears upon these reasons.

§ 14. 1) Because by how much more the sense and reason is depraved, by so much the less the man hath pleasure in his sin. For if he be wholly mad or senseless, his sin is wholly useless to him, it does him no present delight, any more than to a beast to push with his horns; which therefore is not criminal because he cannot reflect upon his own act, he cannot choose it for a reasonable consideration, he hath no will to entertain it. But if he be not so far gone, then there is some proportion of guilt, because there is of choice in the shipwrecks of his reason and his will: and therefore Theodoret[p] said, Τὸ δὲ τῆς μέθης ἔχει τινὰ μέμψιν κεκραμένην συγγνώμῃ, 'drunkenness hath some reproof, and some pity; some punishment, and some pardon.' And Arrius Menander[q] said that *per vinum aut lasciviam lapsis capitalis pœna remittenda est*, 'they that sin by drunkenness or passion may be punished, but not capitally;' the same with that in Stobæus[r], Τὴν μέθην ἀναμαρτήτικόν τι περιέχειν. Even in the follies and stupidities of drunkenness there is something amiss besides the material part. But this is when there is something left by which he can understand and choose something of the crime.

§ 15. 2) The mischiefs consequent to drunkenness are therefore less moral evils, because they do less moral mischief. For no man by his lust acted in his drunkenness is made more lustful, or by any act then done is promoted towards a vicious habit; for he knew not what he did, and remembers it not: it is like Lot's incest, no more known after than before, and therefore it leaves no sediment or lees

[p] Quæst. lxx. in Genes. [tom. i. p. 82.]

[q] In lib. vi. de re milit. [inter script. deperd.—Fabric. bibl. Græc., tom. iv. p. 343.]

[r] [Οὐκ ἔστιν, Ἐμεθύσθην πάτερ, λέγοντα νῦν,
ἥμαρτον, ὥστε πρὸς σέ με συγγνώμης τυχεῖν.
ὁ γὰρ εἰς τὸν ἀσθενῆ βίᾳ τι, Πάμφιλε,
ποιῶν, ὑβρίζειν οὐκ ἁμαρτάνειν δοκεῖ.—
Philipp. apud Stob. floril., tit. xviii. 21.]

behind it; which shews it to have more natural vileness than moral, and therefore is nearer to pardon.

Et causa justa est, siquidem ita est ut prædicas,
Te eam compressisse vinolentum virginem[s].

If the young man was drunk when he lay with her he hath some excuse, that is, as to his lust; but that is an aggravation of his drunkenness, and he is not the more acquitted, when the aggravation of his sin and punishment is only placed upon the right cause.

§ 16. 3) If the consequent mischiefs of drunkenness were formally those sins which materially they are, that is, if they were properly guilty of all that they ignorantly do, then it would follow that because murder is worse than drunkenness, and yet that murder was involuntary, some action that is involuntary would be more malicious than that which is chosen. If it be replied that those consequent acts are chosen because the cause of them is chosen, according to what is discoursed in the fourth rule of this chapter; I answer, that this is true if drunkenness were not an accidental cause of them: but these effects being but contingent to drunkenness, and the effect of some other evil principle, which then prevails when by drunkenness the man's guards are called off, therefore they cannot be entirely attributed to drunkenness; and therefore if a man be surprised with drink, or is advised to it as to a medicine, if he falls into such consequent disorders, it would be hard to damn this man as a murderer or as an incestuous person, when he is so neither by his present nor his antecedent choice. Therefore it is that Libanius[t] says that one who hath grievously offended another πολλάκις ἀθῶος ἀπῆλθεν εἰς οἶνον καταφυγών, 'oftentimes is not punished when wine was his excuse;' and the scholiast upon the βασιλικὰ[u] says that he that kills a man ἀπὸ μελέτης, 'with deliberation,' is ἀσύγγνωστος, 'not to be pardoned:' if he does it by chance he is free; but if by drunkenness he was by the Roman law banished for five years: and thus justice is preserved on all hands, that the drunkenness should be punished more than drunkenness, and the murder less than murder. For that is the worse for having such a daughter, but this is more pardonable for having such a mother.

§ 17. But if the drunkenness be but imperfect, if the consequent crimes be remembered and delighted in afterwards (for that is a certain indication the stupidity was not extreme, not equal to an excuse), then

Μισῶ μνήμονα συμπότην, Πρόκιλλε[v]·

such a drunkard is also all that which he acts and professes in his folly: a remembering drunkard, as he is but an ill companion, so if he falls into the horrid consequents which too often are the punishments of intemperance, hath no excuse. But if he chose drunken-

[s] Aulul. act. iv. scen. 7. [7.]
[t] Declamat. xxii. [tom. i. p. 543 D.]
[u] [In lib. lx. tit. 39. tom. vii. p. 693 D.]
[v] [Mart., lib. i. epigr. 28: cf. Plutarch. sympos., lib. i. tom. viii. p. 416.]

ness on purpose that he might have impudence enough to do a mischief, he committed the sin beforehand, and was before he acted it guilty before God; and when he hath acted it he is also guilty before men[w]. But unless it be in these cases, the actions done by him that understands not what he does are as the actions of a mad-man or a fool. The sin was done before, and the mischief and the punishment do follow: but the guilt is in the cause, not in the effect that is involuntary; though proceeding from a cause that was indeed voluntary, but not univocal and proper.

§ 18. The sense of this question thus explicated agrees with the doctrine of the fathers, who in the instance of Lot declared him criminal only as to his drunkenness, not to his incest. So Origen[x], S. Chrysostom[y], S. Austin[z]: and S. Ambrose[a] gives this account of the whole question; *Sane discimus vitandam ebrietatem, &c.*, 'we learn that drunkenness is to be avoided, by which we are brought to that evil state of things, that we cannot beware of crimes: for those things which being sober we avoid, when we are drunk we ignorantly commit.' And a little after; they who have been too free in drinking wine, know not what they speak, they are like men dead and buried: *Ideoque siqua per vinum deliquerint, apud sapientes judices venia quidem facta donantur, sed levitatis damnantur*[b] *auctores*, 'therefore what vilenesses they commit in their wine (meaning when they know not what they do) for the deeds themselves so ignorantly committed they find pardon amongst wise judges, but for their temulency a condemnation.'

§ 19. The result of these discourses is this: the vilenesses which are done by drunken and stupid persons unwittingly, are not of the same kind of which naturally they are and would be if the actors were sober: they are not the crimes of murder or lust or incest respectively, but circumstances of great horror aggravating the drunkenness, and deeply condemning the man. And yet, if the drunkenness be not extreme, I mean the stupidity and ignorance, if that be not such as to take away wholly the use of reason and moral choice, all the remaining portions of reason do in their proper degree make the imperfect drunkard guilty of other perfect crimes, even of whatsoever he then shall act; and they shall for their own degrees of remaining choice be imputed to him as certainly as the drunkenness.

§ 20. The same is the case of inconsideration and oblivion, whose effects are innocent upon the same accounts and no other. If they come in upon a negative principle, that is, begin and proceed upon a natural deficiency and an unavoidable cause, that which is forgotten,

[w] See rule 4 of this chap. [§ 2. p. 612.]

[x] Homil. v. in. Genes. [tom. ii. p. 74.]

[y] Homil. xliv. in Genes. [tom. iv. p. 453 D.]

[z] Lib. xxii. contr. Faust. Manich., cap. 44. [tom. viii. col. 386.]

[a] Lib. de patriarch. Abraham, cap. 6. [tom. i. col. 301 B.]

[b] ['notantur,' edd.]

or that which is done by forgetfulness must be amended and repaired as well as we can: but by a preceding morally diligent care, and an after-revocation, nolition or amends, it may be kept innocent. This only thing is to be interposed, that if by the precontract of a vicious habit there is ingenerated in our spirits and exterior faculties such a promptness and facility of sinning, that many of the acts of such a habit are done without advertency, as in vile and habitual swearing, every such action though passing without notice is criminal, because it is the product of the will habitually depraved; and there is no other cause why the actual consent of the will is not at it, but because it was not required, but presumed, and taken without dispute. A young lutenist disputes and contends for every single touch of a string: but when he hath made it easy and habitual, he resolves to play a set of lessons, and every stroke is voluntary, though every one is not now actually considered.

QUESTION.

§ 21. To this sect. 'of ignorance' belongs the question concerning fraud and guile. For if another man cozens and abuses my understanding, he places me in ignorance; and then it is worth our enquiry, what morality or what obligation there is in those actions which are done by us so abused, so deceived, so made ignorant, and incapable of judging rightly.

§ 22. The answer relies upon the same grounds as formerly, with this advantage, that he who is deceived by the crafts of another, hath most commonly an ignorance that is very innocent; and then if that ignorance be wholly the cause of any action, the cause is innocent, and so is the production. And upon the same accounts we are to judge concerning the obligation of promises and contracts made by persons in error and deception. α) If the error be concerning the substance of the thing contracted for, the contract is naturally invalid, and obliges not at all. If Titius buy a horse, and Caius send him a mule or an ox, there is nothing done, Titius hath made no bargain at all. If I buy a man-servant, and the merchant sells me a maiden dressed in man's apparel, this makes the contract invalid; I made no bargain for a maid-servant, but for a man. When Jacob married Rachel, and lay with Leah, that concumbency made no marriage between them; for the substitution of another person was such an injury as made the contract to be none at all: and unless Jacob had afterwards consented, Leah had been none of his wife. β) If the error and ignorance be not in the substance of the contract, whatever else the error be, the contract is naturally valid, that is, without a new contract and renewed consent it can stand; but if that error was the cause of the contract, which if the error had not been would

not have been at all, then it is in the power of the abused person to rescind the contract, and the fraudulent contractor is in conscience bound to recede from all his ill-acquired advantages. The reason is, because he did injury to his neighbour, and placed him in evil dispositions and unaptness to choose wisely, otherwise than God and the laws of nations and the common intention of contractors do intend: and therefore although there was so much of the substantial requisites as could make a contract naturally valid, yet it was so ill that all laws and intentions and tacit conditions of contractors have thought fit to relieve the abused person. *Dolo vel metu adhibito, actio quidem nascitur, si subdita stipulatio sit: per doli mali tamen vel metus exceptionem submoveri petitio debet*[c]: and the reason is given *l.* '*Si dolo.*' 5. *C. de rescindenda venditione*[d];—*Si dolo adversarii deceptum venditionem prædii te fecisse præses provinciæ aditus animadverterit, sciens contrarium esse dolum bonæ fidei* (*quæ in hujusmodi maxime contractibus exigitur*) *rescindi venditionem jubebit.* In contracts the honesty of the contractors is principally to be regarded, and fraud is destructive of all honest intentions; and therefore the prætor shall rescind such fraudulent bargains. γ) But if the error was not the entire cause of the contract, but that upon other accounts we would have bargained, only we would not have paid so great a price, then the bargain is valid, and the prætor cannot rescind it, nor the injured person revoke it; but the civil law[e] in this case did permit *actionem quanti minoris,* that is, an amends for so much detriment as I suffer apparently by the fraud. If Caius sells to Mævius sheep which he affirms to be sound, but they are indeed rotten, the law permits not rescission of the bargain, but forces Caius to restore so much of the price as the sheep were overvalued. And this is also the measure in the court of conscience. But this is to be understood in such cases where the fault of the vendible commodity cannot be discerned by the buyer, and where the seller did deceive voluntarily. For in other cases *caveat emptor* is the rule of the law, 'let the buyer look to it,' and it is also the rule in conscience. The seller must not affirm the thing to be without fault if he knows it vicious and faulty: but neither is he bound to proclaim the faults of his goods, if they be discernible. And of this Cicero[f] discourses reasonably, *Num te emere coegit, qui ne hortatus quidem est? Ille quod non placebat proscripsit; quod placebat emisti. Quod si qui proscribunt villam bonam beneque ædificatam, non existimantur fefellisse, etiamsi illa nec bona est, nec ædificata ratione; multo minus qui domum non laudarunt: ubi enim judicium emptoris est, ibi fraus venditoris quæ potest esse? Sin autem dictum non omne præstandum est, quod dictum non est, id præstandum putas? Quid vero est stultius quam venditorem ejus rei*

[c] L. 'Dolo,' 5. C. de inutilib. stipulat. [Cod. Justin., lib. viii. tit. 39.] et Instit. de exceptionib. in initio. [lib. iv. tit. 13.]

[d] [Cod. Justin., lib. iv. tit. 44. l. 5.]

[e] L. 13. ff. de actionibus empti, in princ. [Digest., lib. xix. tit. 1.]

[f] Lib. iii. offic. [cap. 13.]

quam vendat vitia narrare? Quid autem tam absurdum, quam si domini jussu ita præco prædicet, Domum vendo pestilentem? 'who compelled thee to buy? the man that sold it did not (it may be) so much as desire thee. He sold it because it did not please him; and because it did please thee thou hast bought it. He that sets up a bill of sale and proclaims a house fair, and well built and well seated, hath not deceived thee, though it be neither well built, nor well seated; because if it be entire for thee to make a judgment, he hath not deceived thee. Much less if he hath not praised it. For if all that is spoken in the bill is not of necessity (viz. in order to the bargain or thy choice) to be verified, much less must that be performed or required which was not spoken. But does ever any man cry stinking fish to be sold, or say, Come and buy a house that hath the plague in it?' All this is great reason: only this is to be added, that such faults as cannot be discerned by the buyer must be declared, or must be allowed for in the price: and the case is the same, if the buyer be a child, or a fool, or an ignorant undiscerning person; for no man must be made richer by the injury and folly of his brother[g]. I know that in all the public contracts of mankind, that which all men consent in is, to buy cheap and to sell dear: but christian religion, and the contempt of the world, and the love of spiritual interests, are sent from heaven, to cause merchandise to be an instance of society, and not a craft and robbery. δ) If the buyer be deceived, but not by the seller, but by a third person, and that deception be the cause of the contract, the buyer may rescind the contract if he can; that is, he is not in conscience obliged to stand to it, if he can be quit in law: but he that deceived him is bound to repair his injury if he have suffered any, or to break the bargain if the goods be unaltered. These things have no particular reason, but are evident upon the former accounts.

SECT. III.—OF FEAR AND VIOLENCE, AND HOW THEY CAN MAKE AN ACTION INVOLUNTARY.

RULE VII.

FEAR THAT MAKES OUR REASON USELESS AND SUFFERS US NOT TO CONSIDER, LEAVES THE ACTIONS IT PRODUCES FREE FROM CRIME, EVEN THOUGH ITSELF BE CULPABLE.

§ 1. THE case is this; Roberto Mangone a poor Neapolitan travelling upon the mountains to his own house, is seized on by the

[g] L. 'In causæ,' § 'Idem Pomp.' ff. de minor. [Digest., lib. iv. tit. 4. l. 16 § 4.] et l. 'Item si,' § ult. ff. Locati, [lib. xix. tit. 2. l. 22.] L. 'Si voluntate,' C. de rescind. vend. [Cod. Justin., lib. iv. tit. 44. l. 8.]

banditti, a pistol is put to his breast, and he threatened to be killed unless he will be their guide to the house of signior Seguiri his landlord, whom he knows they intend to rob and murder. The poor Mangone did so: his lord was murdered, his goods rifled and his house burned. The question is, whether Mangone be guilty of his lord's death.

§ 2. To this the answer is easy, that Mangone is not innocent; and though he did not consent clearly and delightingly to Seguiri's death, yet rather than die himself he was willing the other should. No man is desirous in a storm to throw his goods into the sea if he could help it, and save his life; but rather than lose his goods and his life too he heaves them overboard. Μικταὶ μὲν οὖν εἰσιν αἱ τοιαῦται πράξεις· ἐοίκασι καὶ μᾶλλον ἑκουσίοις, said Aristotle[h], 'these kind of actions are mixed, but they have more of spontaneity and election in them than of constraint.' No Christian remaining a Christian is willing to offer sacrifice to demons, or to abjure Christ, if he be let alone: but he that in time of persecution falls away, not changing his heart, but denying his profession, this man is not excused by his fear, but betrayed by it. Ἔνια δ' ἴσως οὐκ ἔστιν ἀναγκασθῆναι, ἀλλὰ μᾶλλον ἀποθνητέον, παθόντα τὰ δεινότατα[i] 'there are some things to which a man must not suffer himself to be compelled by any force, but he must rather die than do them.' And because there are some things ἃ καὶ τὴν ἀνθρωπίνην φύσιν ὑπερτείνει, 'which are insufferable to human nature,' and therefore there is in laws assigned a certain allowance of fear, *qui potest cadere in fortem et constantem virum*, that is, in the case of danger of suffering the extremest evils, and our obedience to human laws is excused in such cases, because no man is ordinarily bound by the laws to suffer a greater evil in keeping the law than is threatened by the law itself to him that breaks them; therefore the law allows an omission of obedience in the fear of the greatest evils, as I have already explicated[k]. But in divine laws it is otherwise, because no man can threaten or inflict on another an evil comparably so great as God does on them that break His laws; and therefore the less fear cannot be a reasonable excuse against a greater; and in all cases the fear of man must yield to the fear of God. And therefore in the matter of a divine commandment, no fear of temporal evil is an excuse or warranty. Because we are taught to despise poverty and pain and death, and to do all this cheerfully and gloriously. And therefore this case of conscience and its whole dimensions are quickly measured.

§ 3. But this is only in negative commandments, for they can never be broken with innocence upon what pretended necessity or violence soever. But in positive commandments the case is not so

[h] Ethic., lib. iii. cap. 1. [tom. ii. p. 1110.]

[i] [ibid.]

[k] Lib. iii. chap. 1. rule 2. [p. 31. above.]

clear, but fit to be more considered: but it will quickly also come to an issue, if we distinguish omissions from commissions. For no man may upon any pretence do any thing against a positive commandment. He may omit to visit a Christian in prison, if he fears he shall lose his life in the visitation, or be threatened with any great calamity; but he may not do him any injury or oppression to save his life and liberty. But I have to this also given particular answer upon another occasion[m]. That which I am to add here is this; there is no peradventure but the obedience to a positive commandment, till it be placed in its own circumstances and required here and now and so, will give place to so just a cause of deference and stay as is the securing ourselves against a great fear. For where God hath not required us in particular manner to do a duty, He hath required it in a very particular manner to preserve ourselves. But when the case is so that the particular is required, no fear of man can hinder us. For in all things God is to be preferred. And therefore it is so rarely well ordered that unless it be in extraordinary cases, as the apostles preaching the gospel, their open confessions of faith, their declaring against the religions of the world at that time, for which they had special commands, and were to do them and not to fear the fear of men, there is scarce any positive law of God but either it may be performed by an internal suppletory, by a desire and willingness and endeavour, or else will be sufficient to be done in the article of death, that is, then when we need not fear the worst that man can do unto us. Thus it is in the susception of the sacraments; from the actual susception of which by a great and just fear if we be frighted, we cannot be hindered from the desire and spiritual and most effective susception of them: and from the actual if we be by a just fear delayed (though the case cannot often happen) yet it is generally supposed that if they be done before our death, the commandment is obeyed, if the delay was not on our part; and at our death no new fear of death can be a just excuse. However, if it or any thing else be positively and determinately required in circumstances, we must not be afraid of them that can only kill the body; or if we be, the fear and the omission are both criminal, and this is not excused by that.

§ 4. But if in these or any other cases the fear be a surprise, sudden, and violent, and impetuous, that is, such that our reason is invaded and made useless, such as by a natural effort disorders all our faculties, such as that of Arachne in Ovid[n].

> Quid mihi tunc animi miseræ fuit? anne quod agnæ est
> Siqua lupos audit circum stabula alta frementes?
> Aut lepori, qui vepre latens hostilia cernit
> Ora canum, nullos audet dare corpore motus?

[m] Ubi supra, et lib. ii. chap. 3. rule 2. [vol. ix. p. 558.]

[n] [Metam. lib. v. 626.]

such a fright as a hare or lamb are in when they are pursued by dogs and foxes,

> Occupat obsessos sudor mihi frigidus artus,
> Cæruleæque cadunt toto de corpore guttæ[o],

when nature is in a lipothymy, and our strengths are made extravagant, when we can do any thing in flying and nothing at all to consider; then our understanding cannot deliberate, and then our will does not consent, and then the effect is pitiable but not criminal, but the fear itself possibly may be both. For sometimes our fear may be so great, that it fills all our faculties, and then there cannot be any deliberation; for that must be at leisure, and must look upon two objects. Statius[p] well describes this kind of fear in the similitude of a hunted stag.

> —— qualis cum cerva cruentis
> Circumventa lupis, nullum cui pectore molli
> Robur, et in volucri tenuis fiducia cursu,
> Præcipitat suspensa fugam, jam jamque teneri
> Credit, et illusos audit concurrere morsus:

she hath no courage, no confidence, no hope of any thing; she dies if she stays, but she cannot stay to consider so long; and when she runs she dies too, and she hears the wolf at her ear, and sees him with her eye, and feels the teeth in her heart, and dies with fear. In such cases as these we are as men without reason, and therefore to be judged accordingly. I have heard of a trooper who in the late sad wars of England being alarmed, was so affrighted that he bridled his comrade instead of his horse: and in the last inroad which the Turks made into the empire, a German carrier was so affrighted with the noise of Turkish horses coming, that he knew not how to make use of his own to fly away, but deploring his condition that his horse being loaden could not run fast, had not the reason left him, though he had time, to throw off his pack, but stayed in that amazement till the prisoner of fear became a slave to the Turks. What a man does in such a case, no equal estimator of things will impute to choice or malice. He that flies from a lion pursuing him, and in his affrightment runs into a river, is not criminally guilty of his own death. He runs into one death before another, but prefers it not: for if he were in the same fear of drowning he would leap ashore, though a lion did stand there expecting of a prey.

§ 5. Concerning degrees of fear which are less, such which leave us in a power to consider and deliberate, they may lessen the malice of the crime to which they drive, but cannot make the fact innocent. He that is taken by a tyrant and an unjust power, and put amongst the troops, is not innocent though in that fear and against his will he fight against his prince. Ἔς τε μάχας ἐθελονται (εἴγε ἐθελοντὰς τοὺς ἀναγκασθέντας φόβῳ καλεῖν δεῖ) ἦλθον, said Dio Cocceius[q],

[o] Metam. [ibid. 633.]
[p] Lib. v. Thebaid. [165.]
[q] [Hist. Rom., lib. xliv. § 30. p. 400.]

'they went willingly to war, if at least they may be said to be willing who are constrained by fear.' It is an unwilling willingness, and therefore it is a sin almost against their will. For in despite of such a constraint, a man may use his liberty; as Lucian[r] says of the young man, οὐδὲ νῦν γεγάμηκεν, ἀλλὰ καταναγκαζόμενος καὶ βιαζόμενος ἠρνήσατο, 'he did not marry, but though his father forced and compelled him, yet he refused.'

§ 6. The same is the case of superstition, which is an excessive and inordinate fear in the matter of religion. If the fear be supreme and distracting, the effects of it are very pitiable; but criminal only in that degree in which it is vincible and can be subdued by reason. When Michael Stifelius a German in Luther's time had affrighted the people with a confident and terrible prediction of the day of judgment within a few days to be revealed, the poor affrighted people left off their daily labours, and took care of no duty for this life. This omission at another time would have been very criminal; but now their superstitious fear did alleviate it, if not wholly take it away. But in this there is nothing particular, save only that the causes of fear in this case are worse than in other things; but the effects themselves are not commonly very bad.

§ 7. But this passion of fear hath in it yet more difficulty in relation to human contracts and obligations, which can be evacuated and declared never to have obliged if they commenced with fear. For upon this account some pretend contracts of marriages, absolutions from ecclesiastical censures, testimonies in testamentary causes, vows, donations, sentences, resignations of benefices, constitutions of proctors, election to offices, and oaths of obligation to men, and promises, not to oblige, if the promiser or contractor was constrained by fear.

§ 8. But to all these the answer will be the same, for they are all discernible by the same reason. If the fear was such that it might affright a wise and a constant person, the law judges the contract to be null, and not to oblige in law, which is the measure of contracts and legal obligations. But although the law declares many particular cases, in which the fear does annul the contract, and in such cases ordinarily there needs no further enquiry; yet because many cases happen in which the law hath not regularly declared her sentence, by that measure which the law goes by we may without trouble determine ourselves. The rule therefore is this; when any evil threatened is so great, that to suffer it is more intolerable than to do the thing to which you are compelled, there the fear is supposed great enough to nullify the contract. If a rich person be threatened that he shall be forced to pay a hundred pound or marry the oppressor's daughter; if he promises to marry her he is obliged, and that fear and that threatening shall not prevail to evacuate his pro-

[r] Dial. meretric. [vii. cap. 4. tom. viii. p. 222.]

mise. Because he that so threatens intending but an evil that is very tolerable, if the marriage be of worse mischief, he did not choose it out of fear; for he that does so, chooses the less evil to avoid a greater, not a greater to avoid a less: so S. Austin[s] observes, *Neque enim dici solet quispiam voluntate fecisse, siquid fecit invitus; quanquam si subtilius advertamus, etiam quod quisque invitus facere cogitur, si facit, voluntate facit: sed quia mallet aliud, ideo invitus, hoc est, nolens, facere dicitur;* and Simplicius[t] to the same purpose, *quia licet inviti agamus, tamen sic agere eligimus.* It is indeed against our will; but when things are in an evil state we choose the least. If therefore he chooses that which he says is a worse evil, he cannot pretend it is for that fear; and consequently it must be upon some other motive, something of his own; and if it be, it will verify the contract. Titius finds Caius at an advantage with a watch and a ring about him of no great value; he threatens to take them from him, unless Caius will promise the next day to bring him twenty talents. Caius promises it, and therefore is obliged, for he cannot say he was compelled. For no less violence can constrain us to suffer a greater, because that is far more eligible than this. And therefore the law calls nothing a just cause of fear, but the fear of the greatest evils, as death, torment, dismembering, intolerable disgrace; that is, such things which to avoid a man would suffer any evil that is less. Now because in contracts we intend some advantage to ourselves, real or imaginary, and in contracts effected by a great fear we can design none but the avoiding of a greater mischief, the law and right reason wholly attribute it to fear, and therefore annul the contract. Martial's[u] case is pertinent to this enquiry,

> Quod si me tonsor, cum stricta novacula supra est,
> Tunc libertatem divitiasque roget,
> Promittam: nec enim rogat illo tempore tonsor;
> Latro rogat: res est imperiosa timor.
> Sed fuerit curva cum tuta novacula theca,
> Frangam tonsori crura manusque simul.

If a barber when the razor is upon my throat contracts with me for twenty pound, if I fear he will cut my throat if he be denied, I promise to him as to a thief, with whom whatsoever contract I make in my intolerable fear, no law of man does verify it. But Martial as to his instance was no good casuist.

§ 9. For if it be enquired whether I am obliged in conscience to keep my promise to a thief or a bandito, which I made to save my life; I answer that I am. Because he being an outlaw and rebel against all civil laws, and in a state of war, whatever you promise to him, you are to understand it according to that law under which then you are, which is the law of nature and force together. So that

[s] Lib. singul. ad Marcellin. de spir. et liter. [cap. 31. tom. x. col. 115 B.]
[t] In Epictetum. [cap. 1. p. 30. 4to. Lugd. Bat. 1540.]
[u] Lib. xi. [ep. 59.]

you cannot be guarded by the defensative of the civil laws, nor is your contract under its guard and conditions. In contracts under the protection of civil laws, we are to go by its measures, and the contract is good or bad accordingly. But when we have no measures but what we can get of ourselves, our contracts are to begin and end between ourselves, and by our own proportions. But in law no man is supposed to have consented, but he in whose power it is to dissent. *Si vis scire ut velim, effice ut possim nolle*[x]: and every contract must have ὄρεξιν κατεξούσιον, as Damascene[y] calls it, 'a desire free from all bond.' Αὐτεξούσιον δὲ ὅ, τι μὴ ἐξ ἀνάγκης. If there be force and a sad necessity in it, it is a calamity rather than a contract; and therefore the laws intend to defend and rescue us from the oppression.

§ 10. I am to add one caution; that no reverential fear, let it be never so great, and the person never so timorous, so that the use and ministries of reason be left, can excuse a sin, or nullify a contract. The reason is given by Aristotle[z], Ἡ μὲν οὖν πατρικὴ πρόσταξις οὐκ ἔχει τὸ ἰσχυρὸν οὐδὲ τὸ ἀναγκαῖον, 'the father's empire hath in it no violence and no coaction.' And Heliodorus Prusæus[a] in his paraphrase saith the same thing, that the commands of parents, or such whom we reverence and fear, τὴν ἰσχὺν οὐχ οὕτω μεγάλην ἔχειν ὥστε βιάζεσθαι, 'have not such force as to compel:' not but that we are to obey; but that what we do out of reverential fear to them is not compelled, but voluntary and chosen.

§ 11. What is said of fear is not true of other passions, lust and anger, or whatever else is productive of those effects which use to make men ashamed, and disorder all their interests. *α*) Because these passions are seldom of that nature and degree of violence as to take away all powers of deliberation, and therefore they are but seldom fit to be pretended in excuse of any action. *β*) They are commonly the true mothers, the univocal parents of their productions, otherwise than it is in fear, and drunkenness, and ignorance; for these produce things of a nature different from their immediate principles, as drunkenness produces effects of anger, of lust, &c., that is, it is the occasion of them, not the proper mother. But lust produces lust, and anger sends forth angry words and spiteful actions, and resolutions of revenge. *γ*) The products which come from these passions are so very far from being rendered involuntary, that by these passions they are made most delightful, and without them they could not please at all. *δ*) Whenever they prevail to any violence or extremity of degree, it is by an increasing will; not by weakness and natural infirmity, but by a moral state of infirmity, that is, a state of sinfulness. *ε*) It is not in these as it is in fear, or vincible igno-

[x] Seneca. [vid. de benef., lib. vi. cap. 21. tom. i. p. 803.]

[y] [De duab. volunt., cap. xvii. tom. i. p. 537 C.]

[z] Ethic., lib. x. c. ult. [tom. ii. p. 1180.]

[a] [al. Apollon. Rhod. in loc. Vid. p. 496 supra.]

rance, that what is voluntary in the cause may be involuntary in the effect: but in these passions and temptations the mother and the daughter are chosen; not the one directly and the other by interpretation, but both of them properly, directly, and immediately. For these reasons the case of these passions is curiously to be distinguished from the precedent. But when these passions do come to extremity, although their proper acts are not the less sins but the greater, as an act of anger is the more devilish by how much the passion is the more extreme; yet if any equivocal and contingent effects be produced, as if in the violence of lust a child be run over and hurt, or any thing that is not natural to that passion, nor intended by the man, then according to the degree of the ecstacy and transport by the passion, the contingent effect may be lessened in its malignity. And in this sense is that of Libanius[b] to be understood; or else it is not true that injuries are very often to be remitted if the man hath drunkenness for his excuse, ἢ θυμὸν, ἢ προπέτειαν, ἢ λήθην, ἤτοι τοιοῦτον, 'or anger, or forgetfulness, or arrogance, or any such like thing.' Like to this is that of Arrius Menander[c], 'capital punishments are not to be inflicted *per vinum aut lasciviam lapsis*,' to them that offend by the follies of drunkenness or the violence of lust.

——— Et vino tortus, et ira[d];

Wine and rage are like two racks, and compel men to open secrets. Now when the case is so that the effect is equivocal, as it is in drunkenness in many instances, and in other passions sometimes, there only there is some diminution or excusing of the crime. But the ancients gave too much liberty, and an indifferent sentence to these cases, because wanting the christian measures they understood no better.

[b] Declamât. xxii. [tom. i. p. 543 D.]
[c] [Ubi supra.]
[d] [Hor., lib. i. epist. xviii. 38.]

CHAP. II.

OF THE FINAL CAUSE OF HUMAN ACTIONS; AND ITS INFLUENCE OR CAUSALITY OF GOOD AND EVIL.

RULE I.

IN EVERY GOOD ACTION THE MEANS AND THE END MUST BE SYMBOLICAL: SO THAT, 1) A GOOD ACTION DONE FOR AN EVIL END, AND 2) AN EVIL ACTION DONE FOR A GOOD END, ARE ALIKE CRIMINAL.

§ 1. THE first part of this rule is in the express words of our blessed Lord[a], "Take heed that you give not your alms before men to be seen of them." Even alms, which are our righteousness, and so rendered both by the Arabic and the vulgar Latin[b], yet if done to vain-glorious purposes are good for nothing, but are directly acts of vain-glory. Τῆς εὐποιΐας σαλπιζομένης ὄφελος οὐδὲν, saith S. Basil; 'the noise of a trumpet spoils our alms.' For from the end every action is qualified; and an indifferent action is made good and bad by the end; and that which is so already is made more so by a participation of that to which it is designed. For the end changes the nature as well as the morality of the action. So Aristotle[c], Εἰ ὁ μὲν τοῦ κερδαίνειν ἕνεκα μοιχεύοι καὶ προσλαμβάνων, ὁ δὲ προστιθεὶς καὶ ζημιούμενος δι' ἐπιθυμίαν· οὗτος μὲν ἀκόλαστος· δόξειεν ἂν εἶναι μᾶλλον ἢ πλεονέκτης· ἐκεῖνος δ' ἄδικος, ἀκόλαστος δ' οὔ· 'he that commits adultery for gain is covetous, not lascivious: but he that spends his money and suffers loss for his lust's sake, he is the wanton.' And therefore God and all wise men regard not the exterior action in their accounts of virtue, but the manner and purpose of doing it. *Quoniam quidem non in facto laus est, sed in eo quemadmodum fiat. .. Eadem res si gulæ datur, turpis est: si honori, reprehensionem effugit. .. Amico ægro aliquis assidet? probamus: at hoc si hæreditatis causa facit, vultur est, cadaver exspectat,*—so Seneca[d]: 'the

[a] [Matt. vi. 1.]
[b] ['Justitiam vestram,'—ed. vulg.]
[c] Lib. v. ethic., cap. 2. [tom. ii. p. 1130.]
[d] [Epist. xcv. tom. ii. p. 467, 8.]

praise and virtue is not in the thing done, but in the manner of doing it. If we spend great sums of money in our kitchen it is sordid: but if upon public works, on colleges and hospitals, on the poor or upon religion, it is brave and noble. He that visits his sick friend in charity, does well; but he that sits by him and watches with him in hope to get a legacy, is a vulture, and watches for the carcass and the prey.'

§ 2. Now concerning this, the best compendium of all the cases of conscience which can relate hither, is, that with hearty simplicity we pursue that rule of S. Paul[e], "Whether ye eat or drink, and whatsoever ye do, do all to the glory of God:" the same with those other words of his[f], for the one illustrates and explicates the other, "Whatsoever ye shall do in word or deed, do all in the name of the Lord Jesus, giving thanks to God even the Father by Him." Concerning the obligation and full sense of these precepts, the following measures are our rule.

§ 3. 1) He that in every action that is considerable, and fit to be noted and discerned, and is distinguished by counsels and consultations, by deliberation and observation, does actually design the glory of God, does His work most perfectly. It will shame the tepidity and incuriousness of Christians, if I tell them that this advice is given to us by some wise heathens. When Marcus Brutus had given many excellent precepts to parents, and children, and brethren, he adds, *Hæc nemo faciet quemadmodum debet nisi habuerit quo referat. Proponamus oportet finem summi boni, ad quem nitamur, ad quem omne factum nostrum dictumque respiciat, veluti navigantibus ad aliquid sidus dirigendus est cursus:* 'no man can do these things as he ought, unless he direct them to some proper end: we must propose to ourselves the chiefest good for our end, to which every word and every deed of ours must have regard; as mariners in their sailing look to a star for conduct.' This is not so to be understood as if we were to make actual directions and dedications of every single word, or little minute action we do, to the glory of God: this is a snare to consciences, and an hypochondriacal devotion which some friars have invented, and attributed to S. Gertrude, of whom they report that Christ admonished her that she should consecrate every little part of action and word unto Him; not only every writing, and every discourse, and every meal, and every prayer, but every bit she put into her head, and every letter she did write, every single step she did tread: just as if a man that were to receive a thousand pound should tell it over by so many single maravides, and not be content to tell every shilling, but reckon how many farthings are in the whole sum; this would sound great as the Spanish cobler's portion to his daughter, but certainly a wise man will find something else to do, which may be more really for God's glory, than so to tell his little minutes and

[e] [1 Cor. x. 31.]

[f] [Coloss. iii. 17.]

particles of actions. It is a great piety if we dedicate to God all our states of life, and all our great actions in every state, and all changes, and every day, and every night, and every meal, and every beginning of labour, and give God thanks at every end, and invocate His help in every progression; for so doing, we shall consecrate our whole life to God. And this counsel S. Macarius of Alexandria gave to Palladius bishop of Helenopolis[g], who when he was a young man was much troubled in conscience concerning his unprofitable life, and supposed that he did nothing that was good, nothing that was profitable, but all he did was vain and trifling. Macarius told him, *Dic tu tuis cogitationibus, propter Christum custodio parietes*, when such afflictive thoughts do intervene, say unto them, 'For Christ's sake I keep the walls.' Nothing could be a meaner employment, nothing could be less useful, for the walls were not likely to run away. His meaning was, whatsoever the employment of a man's day or a man's life be, though never so mean, yet if it be done with a single eye, and with an intuition to Christ, it is a holy employment.

§ 4. 2) Although our intentions by how much the more they are actual, by so much they are the better, yet it is not necessary that they be always actual; but they are right if they be virtually and habitually directed unto God: that is, that by some general designation of our actions, by the renewing of our intentions actually in certain periods of time, as in the morning of every day, or at evening, or both, or in every change of employment, we have an actual intuition on God and God's glory; and then, though we only attend to the work without any more actual consideration of the end, the intention may be right, and the action sanctified.

§ 5. 3) But because thousands of words and actions may pass wise and good men in which they do not actually reflect upon the end of God's glory, and that possibly the thinking of it, and saying, I design this to God's glory, is of no more value than if a man says, I love God; which if it be only an act of fancy, or of ineffective affection, is no sure indication of the true love of God, but must be expressed by something that is more material and properly significative of love, according to the commands of God and the manner of men; therefore we cannot better judge of the goodness of our intentions, or that we do our actions for the glory of God, than when we are in all things careful that we do nothing against any of the laws of God. For this is that charity which is the singleness of a christian eye: *ut noverimus omnia opera nostra tunc esse munda, et placere in conspectu Dei, si fiant simplici corde, id est, intentione superna, fine illo charitatis, quia et plenitudo legis charitas est. Oculum ergo hic accipere debemus ipsam intentionem qua facimus quicquid facimus: quæ si munda fuerit et recta, et illud aspiciens quod aspiciendum est, omnia opera nostra quæ secundum eam operamur, necesse*

[g] [Pallad.] hist. Lausiac., c. 20. [p. 932 C.]

est bona sint: so S. Austin. He does all to the glory of God that does all his works, and speaks all his words in charity; just as he works for a reward who does that good thing which shall be rewarded, though it may be he thought not of it since his first beginning of his undertaking. To do all things by the rule of God's will is to do all things for the end of God's glory. For he that walks with his eye upon the rule is all the way careful that he may not dishonour God; and that's a great matter towards it: and he may at least say of himself, *Non ideo tamen eximiam gloriam meruisse me credo, sed tantum effugisse flagitium*[h]; if God hath acquired no honour by my action, I am glad I have not dishonoured Him: and yet he that actually takes care that God be not dishonoured, does obey God, and that's our best love to God, and in this world our greatest glorification of Him; it is more than all songs and thanksgivings expressed in words or transports of fancy. If we take care that all our actions be obedience, and nothing be against God's will, we glorify God rightly. *Adjice nunc, quod nihil honeste fit, nisi cui totus animus incubuit atque affuit, cui nulla parte sui repugnavit*[i]. That is done honestly that is done with an honest and a whole heart, and is all of a piece, nothing at all repugnant to the rule.

§ 6. 4) He does all things for the glory of God that does nothing for an evil or a forbidden end: that is, if we take care that there be no foulness or any unlawful thing in our purposes. For if a man does things wisely, he must design some end; and therefore if his end be not evil, then it is a lawful end: and if he studiously declines every end that is evil, he is careful that God be not displeased, that God be not dishonoured, and whatever ends can be besides all ends that are evil are certainly good, that is, eligible for some good purpose; it comes from God, and to Him it returns. The first of these ways is a doing all things to the glory of God actually. The second does it virtually, or habitually. The third is a glorifying of God *interpretative*, by equivalence and interpretation: and this fourth does it *consecutive*, by way of consequence and acceptation.

§ 7. 5) There is yet another way of doing it, which is so perfect an indication of the designing God's glory, that unless our hearts deceive us, the sign will not; and that is, a beginning all our actions and changes with prayer, and ending them with thanksgiving: this is that which S. Paul[k] calls a "doing all things in the name of the Lord Jesus; giving thanks to God the Father by Him." For to do things in the name of Christ can signify nothing but a doing them at His word, and by His aid; which when we pray for of God in His name, and then return thanks to God by Him, we have evidently directed that action to the divine glory. And this is the full meaning of those words of the apostle, "Every creature is sanctified by the word of God and prayer[l]:" that is, whatsoever is taken according to

[h] Plin., lib. iii. [ep. 11.]
[i] Seneca, ep. lxxxii. tom. ii. p. 336.]
[k] [Coloss. iii. 17.]
[l] [1 Tim. iv. 5.]

God's word, and upon whatsoever so taken we pray for the divine blessing, it is sanctified, and ministers to the good pleasure and glory of God. So that if God be at any end of the action, and be at no end of it displeased, we have secured our intentions: and there will be the less need by scrupulous fears to afflict ourselves concerning actual remembrances and intuitions of the end; since there are so many ways of supply and equivalent performances. For

§ 8. 6) He that does all that he does because he supposes God commands him or allows him, and abstains from all things from which he does abstain only because God hath forbidden those things, this man's intentions are right, and his actions pointed to a proper end. For then every act is an act of obedience, and that is love, and that is the great instrument of the glorification of God.

The second part of this rule, viz., 'An evil action done for a good end is unlawful,' is plainly enough taught us by S. Paul, Rom. iii. 8, and I have already[m] given account of such particulars as are under the general consideration. This only is to be added, that an evil done for a good end merely and entirely is less than that which is not so alleviated; according to that saying of S. Austin, *Pejor est qui concupiscendo quam qui miserando furatur*, He that steals that he may give alms is not so bad as he that steals in covetousness and for his own increase.

RULE II.

TO DO AN ACTION OF ITSELF LAWFUL, FOR TEMPORAL REGARDS, FOR ENDS OF PROFIT, PLEASURE, OR HONOUR, IS NOT UNLAWFUL, EXCEPT IT BE ACCIDENTALLY.

§ 1. THE Arabians have an excellent proverb, *Anima boni operis bona est intentio;* 'a good intention, or a good mind, is the soul of a good work.' Now by how much the more noble that end is which is the design and purpose of the agent, by so much the more excellent is the action. We ought therefore to consider that every thing that God hath made is good, and every desire of man which is natural is also good; and God made amabilities in several objects, and inclinations and tendencies towards them in several faculties; and He that gave us desires to them, intended also that we should obtain and use them, and therefore He also fitted us with means to acquire them. It follows therefore that those actions which proceed from those desires as those desires proceed from God, and tend towards those ends whither God Himself by the measures and laws of creation hath directed them, must needs be very innocent and law-

[m] Book i. ch. 5. rule 8. [vol. ix. p. 237.]

ful. If God gives riches as a blessing and a reward of piety, it is lawful to desire riches, and to labour for them. If honour be a gift of heaven to them that honour God, then to desire honour and to do actions for that end cannot be criminal. If pleasure be created by God as an instrument to serve many ends of nature and grace itself, then to desire pleasure, and to do actions in order to it, is not against the end of God's glory, because it is not against His will. These things are as evident as a demonstration. All that remains is, that in these we also glorify God; that is, so use them, so desire them, so design them, that they be still left in that place and in that order where God appointed them: that is, that they entertain our intermedial desires, and satisfy the needs of our journey and travel, and please our ministering appetites in order to their service to their superior: that as this life is but a passage to a better, so these desires may minister to higher, and by the comforts and satisfactions of this world promote our affections and purchases of the other. The particulars of which are briefly these.

§ 2. 1) These temporal ends must not fill our affections, and divert them from things better and more excellent. *Si ipsa cordis intentio qua facis quod facis, quæ tibi nota est, sordidatur appetitu rerum terrenarum et temporalium, atque cæcatur, quanto magis ipsum factum, cujus incertus est exitus, sordidum et tenebrosum est?* said S. Austin. Our appetites must not be polluted with earthly affections. Which S. Basil expresses well in answer to that question, how in eating and drinking can we glorify God? *Mensam accedas animo non nimium soluto, et in solum cibum hiante*[n], 'Come not to the table with a dissolute mind and a greedy desire. Say not, bring me, bring me, the meat is mine own, I lick my own plate, I live of mine own provisions; and therefore I will please myself, that I may feel myself to live. You must not so speak, and you must not so eat: but rather revolve in thy mind, *Inspectorem habeo Deum*, God beholds me; I will therefore so eat that no man may be offended, nor God's glory lessened. I will not be the slave of my own belly, or follow its pleasures alone; neither will I live to eat, but eat that I may live, and be enabled to bear the burdens of my life and duty.' Plainly thus; he that observes the measures of temperance, the limits and ends of nature, and materially serves those ends which he is bound to take care of; he eats and drinks to God's glory: although he do not formally design by actual intuition this meal to God's glory. Let him so eat that he may be fit to serve God, and that he neither desire, nor actually do serve his lust; let his pleasure extend no further than to serve his health and natural and religious ends, that is, let it be intermedial to that end whither the eating itself is designed; and the intention is innocent. For he that chooses this dish rather than another because it is pleasant, hath not corrupted

[n] In reg. brevior. reg. cxcvi. [tom. ii. p. 481 B.]

his intention; if this pleasure serves no more but that intermedial end which is in a natural or proper order to a further end of God's appointing. That he eats this and not that, his end is pleasure; but because that he eats at all hath another end, even to enable him to live in duty to God and his neighbour, and to preserve his life according to the measures of charity and duty, this end of pleasure is innocent, because it is natural, and produced by God, and goes on further towards the other ends of God. So that the result is this; actions may be done innocently for temporal ends, if those temporal ends be but intermedial, and be carried on further according to the purposes of God.

§ 3. 2) We may serve our temporal ends according to our natural or political desires, always provided that we observe those measures which God hath prescribed; for then we are sure they will bear us on to the glory of God; for that's their purpose, and that must be ours. A man may seek to be honoured, but he must not seek it by ill means; he must not make the service of God to give way to that; his affections must not dwell in that purchase; it must leave no vanity upon his spirit; it must not serve the end of pride; it must be some way or other for God, in the beginning or in the latter end: that is, if it be not actually or virtually designed for God's glory and service, that is, for the good of our neighbour or our own soul, by that means to encourage us in virtue; it must at last be referred to God, and passing through us rest upon Him. Cajetan, Navarre, and Reginaldus from this instance except two cases[o]; saying that if the honour be our due, as if we receive it from our subjects and inferiors; or if it be matter of favour and grace, indulged to us by our superiors, it is lawful to receive it without either actually or habitually referring it unto God: that is, we may take honour to ourselves without referring it to God, when that honour is our due, and when it is not our due; when it is paid us in justice, or when it is given us in kindness; which are almost all the cases in the world of receiving honour. But this doctrine ought not to be received, as being infinitely unreasonable and very impious; since in the case of Herod God declared His anger mightily because he received honour from his subjects, and did not in so doing glorify God.

§ 4. 3) All designs of profit, pleasure and honour, must be the less principal; that is, ever subordinate to duty and religion: for although the profit or the pleasure swim uppermost, and be the actual mover to the particular instance, and be more perceived than any actual consideration of the last and noblest end; yet this is not sufficient to condemn the intention, unless it be made the principal; that is, that it be not only more delighted in by the contacts of sense, but preferred also in our understanding part, and our abused reason. Concerning which we may take accounts by the proportions I have for-

[o] Vide Reginald. prax., lib. xii. cap. 3. n. 27. [p. 492.]

merly described[p]. But in general, our best measure we can take in the regulating this case of conscience is, that we enquire whether we prefer the ultimate or the intermedial end; which trial we may easily make when they cross one another, as it often happens they do in the very instance, and very often in their proportions, circumstances, and degrees. If we will not receive our profit or our pleasure without innocence, our purposes and our hearts are right; only then we are to take care that the love of our profit do not hinder us in making right judgments concerning lawful and unlawful. For very often we think our affections and our purposes are right, when there is no other cause to think so but because our understandings are not right.

But for the fuller understanding of our measures in this enquiry, there are some particular cases of conscience to be resolved.

§ 5. 1) Whether it be lawful to serve God for any end less than Himself; for riches, for honour, for defence and security of our lives, for health and secular satisfactions: that is, whether it be lawful to make God and His service to be intermedial to the things of the world, the ultimate end to be intermedial, and this to be the ultimate.

§ 6. I answer, it is at no hand lawful to do so, if the meaning be such, that if these ends should fail we would no longer serve God; for then these temporal ends are principal, when without them the service would not be done, and with them alone it would. But it is lawful to serve God for temporal ends, provided that these being but some or all the first incentives of duty, they bear us on indeed to the service of God. For he that serves God for temporal ends does well; and it matters not where the service of God begins; whether by fear or hope, whether for temporal regards or upon wise discourses: the more imperfect motives are more usual with beginners. But then although it matters not where we begin, yet it is a very great matter whither these beginnings carry us: for if upon these first incentives we do indeed serve God, then our love to God begins from them; and if these imperfect principles be the beginning of our love, they will certainly end in God. But if the question be concerning a single action, whether it be lawful to be done only for a temporal regard, as to get fame or money; I answer, that a single action done alone for any such consideration with actual rejection, or positive neglect of all other considerations, is in its whole constitution criminal: and in this sense those words of Publius Mimus[q] are true,

[p] See book i. ch. 2. rule 5. [vol. ix. p. 82.]

[q] [Sent. 183. p. 84. ad calc. Terent. ed Bentl., 4to. Amst. 1727.]

Malus est vocandus qui sua causa est bonus,

'he is no good man that does good only for his own sake.' For it is a direct preferring the world before God, and is not a serving God for temporal ends, but wholly a serving ourselves by actions which in those circumstances are no serving of God, but a doing of some material actions of religion in mere hypocrisy. But to serve God for temporal ends is very lawful, α) when these temporal ends are either the incentive and argument used by God to move us to His service; especially if no other be used, and if the covenant be founded upon temporal promises, as the law of Moses was; or β) when these temporal ends are but the first and beginning motive, and lead us on to other and better; or γ) when they do actually consist and are conjunct with others; or δ) when they are in true estimate and value subordinate and less principal; or ϵ) when the temporal end is first served, and the service is a return of gratitude, and the effect of preceding obligation.

The first of these was the case of them in the old law. The second is the ordinary case of beginners in religion. The third was the case of Moses, who "despised to be called the son of Pharaoh's daughter, because he had an eye to the recompence of reward[r]:" which reward was both temporal and eternal. The fourth is the case of all them who follow after godliness, because it "hath the promises of the world that now is, and of that which is to come[s];" and that "seek the kingdom of heaven and the righteousness thereof," knowing that "all these things" which they need here "shall be added to them[t];" added *ex abundanti*, besides those greater and more glorious promises belonging to the kingdom of grace. And the last was the case of Job[u]:—"Doth Job serve God for nought?" No, he had received many blessings which had endeared and obliged his services. But as in all cases God gives us temporal blessings in order to His service and the communication of eternal; so must our intentions and designs be, ever subordinate, ever apt to yield in case of opposition, but always ministering in case of compatibility and consistency.

§ 7. 2) The second enquiry is, in what sense it is true that God must be served purely for His own sake; and virtue pursued for virtue's sake, and not for low regards, for fear or hope, or secular considerations.

§ 8. To this I answer, α) that this question hath its principal effect in discourse and contemplation, and but little in practice and in the real events of actions. For the first thing that any man knows of God is, "that He is, and is a rewarder of them that diligently seek Him[x]:" and no man does choose to serve God but he really is assured

[r] [Hebr. xi. 26.]
[s] [1 Tim. iv. 8.]
[t] [Matt. vi. 33; Luke xii. 31.]
[u] [Job i. 9.]
[x] [Hebr. xi. 6.]

and believes he shall have a very great reward[y]: and all the laws of God are established upon promises and arguments of amability and desire. So that to serve God for His own sake is nothing but an ecstasy of love used by some excellent and contemplative persons, in which they only actually consider the excellencies and perfections of God; being built up in the love of God by the instruments of fear and hope and experience, and the Spirit of God: and to serve God without reward can never be any more than a fiction of law or fancy, a supposition, and a case put, which can never be reduced to act. But even as the serving of God with intuition of the reward is virtually a serving God for love of Him; so serving God out of mere love of Him is virtually a serving God for reward.

Diligeris populo non propter præmia, Cæsar:
Propter te populus præmia, Cæsar, amat[z].

For as no man can wisely hope for the reward but he that does love God; so no man loves God purely and for Himself but he knows also that he is most sure of his reward. It is like S. Paul's wishing himself *anathema* for his brethren: the greater charity he had in so wishing, the further that thing was from being effected.

§ 9. β) But yet there is something more material in the answer to this question. For by God and wise men it is intended we should love God purely and for Himself; but so he does who loves God above every thing else; for all that supereminent love by which God is more loved than all the world, all that love is pure and for Himself. He that loves God only for riches or health, loves these better than God: but he that loves God above these, loves Him for these and for Himself too; for the good that He is, as well as for the good which He does.

§ 10. γ) He is understood to love God for Himself who abstains from sin not only because it is forbidden, or because it will bring him to mischief, but because he hates it; though it may be the prohibition and the fear first brought in that hatred. For this they usually called the love of virtue and honesty; but the other is necessity. *Neque enim minus apud nos honestas, quam apud alios necessitas valet,* said Pliny[a]. And of this we still receive the greater evidence, by how much the less we are moved with any of the lesser appendages of virtue. *Quam me juvat,* said Secundus[b], *quod causis agendis non modo pactione, dono, munere, verum etiam xeniis semper abstinui. Oportet siquidem quæ sunt inhonesta, non quia illicita, sed quasi pudenda vitare. Jucundum tamen, si prohiberi publice videas quod nunquam tibi ipsi permiseris:* 'I am pleased that in the administration of justice I did not only abstain from bribes and presents, but even from new-years' gifts and gratuities. For we ought

[y] See book ii. chap. i. rule 4. [vol. ix. p. 314.]
[z] Mart., lib. viii. [epigr. 54.]
[a] Lib. iv. [epist. 10.]
[b] Liv. v. [epist. 14.]

to abstain from dishonest things not only because they are unlawful, but because they are shameful. But when a man had rather do a base action than suffer trouble, then he gives in evidence that he loves not God and virtue in any sense principally. So he in the comedy [c],

Pol, pudere quam pigere præstat totidem literis.

It is better to blush than to be hungry, to be ashamed than to smart. *Lucrum pudori præstat;* that's the intention and design of these men: they serve virtue as long as virtue will serve their ends of pleasure and profit, and no more: and this is therefore infinitely against the will and glory of God, because it destroys the noblest conjugation of graces that are in christianity; it makes that there shall be no such thing as self-denial and christian fortitude, and the greatest love in giving our lives for God and martyrdom. But the surest conjecture we can make of our intentions when they are complicated is by the actual cession of one to the other. Theodoric advised well to Marcellus the advocate of his exchequer, in Cassiodore [d]; *Non quoties superes, sed quemadmodum vincas inquirimus. Non quæras de potestate nostra, sed potius de jure victoriæ; quando laudabilius a parte fisci perditur, cum justitia non habetur:* 'I have always power on my side, but do you take care that I have right. I am willing my revenue be increased, but at no hand would I have justice violated.' Such men as these and in these cases do love God for Himself, therefore because they love good actions for other considerations than the temporal reward; they love God and serve Him whether it does them hurt or good, pleasure or displeasure: and that's the true meaning of the old brave philosophers and poets, of loving virtue for virtue's sake; they loved it when it was discountenanced, when it was the enemy of their temporal ends and prosperities; and what they called loving virtue for virtue's sake the Christian calls loving God purely, or for God's sake.

§ 11. δ) But if we search the scriptures we shall but seldom see footsteps of any such metaphysical love, as to love God or do our duty without considerations of hope or fear: and amongst the braver gentiles, and amongst the better Christians in imitation and contentions to excel them, it is further observable, that when they speak of loving virtue for virtue's sake, they only mean to exclude all considerations of sordid ends, of slavish fear of laws, or the acquist of money. But even in their greatest bravery some of them designed to themselves the reward of honour and an immortal name; and the best of them did rest in the peace of their minds, and that satisfaction which uses to reward a good action even in this life: but by both these they were by God secretly conducted to an expectation of a reward hereafter: and there was no love of God ever so abstracted

[c] Plaut. Trinum. [act. ii. sc. 2. 64.]
[d] [Variar., lib. i. epist. 22. p. 18. fol. Par. 1579.]

by any command or expressed intention of God, as to lay aside all intuition of that reward; because in the receiving of that reward we are most united unto God, and shall in the best manner and measures glorify Him for ever.

RULE III.

THE END AND INTENTION OF A LAW IS UNDER THE COMMANDMENT, AS MUCH AS THE ACTION ITSELF COMMANDED IN ORDER TO THE END.

THIS rule is meant principally of the laws of God; because the end of all these laws is that which is simply and absolutely good, and nearer to the chief end which is primarily designed[e]; and this is an endearment of our services and a monitor to our duty in many particulars not expressed. God hath commanded us to honour our parents; His end is, that we may receive the fruits of government, provision and order, defence and maintenance respectively. Upon this account, since we are more bound to comply with the purpose and end of God than with the means to that end, when it is evident and known, because the end is greater in God's account than the means; we are taught that it is the will of God so to expound the words of that commandment, as may best promote that end: and by honour is understood all those duties whereby the parent is confessed honourable; and by parents is meant all that are in the place of parents, and who minister to the ends of government.

§ 2. Now this must not be understood as if God did design the end, and cared not for the means; for He is the best chooser of the instruments also of His own service and His own glory: and though the end is better than the means, yet those are the best means which God hath appointed: but if we cannot obtain the means, then it will suffice that the end be acquired as well as we can by other instruments symbolical. Thus we are bound to profess the faith of Christ in the susception of baptism: but if we cannot obtain baptism, which is the usual and appointed publication of our faith, yet we are obliged still to pursue the end, and confess the faith of Christ by profession, by holy living, by declaring our desires of baptism, by dying for Christ if it be required.

§ 3. This also hath effect upon the instances of our duty, so as to enforce the sincerity and ingenuity of them, and to make them really useful in order to their proper ends. Thus we must confess our sins, because we will forsake them; pray to God for His grace, because we

[e] Vide lib. ii. ch. 3. rule 4. [vol. ix. p. 511.]

intend to make use of it; not resting in forms of godliness, but living in the power of it. Diodorus lent to Caius ten attic talents; but Caius is not able to pay a drachm, and therefore Diodorus forgives him that he may be thanked indeed for nothing.

Condones aut sustineas, Diodore, necesse est:
Nam tibi quod solvat non habet arca mea[f].

But if Diodorus will be truly charitable, let him lend to Caius so much more; for he serves no end of charity that lets that alone which he knows he can never get.

Ridicule hæc homines, nequeunt quæ vendere, donant[g].

I deny not but it may accidentally serve the ends of charity to forgive him that is insolvent; it may free him from fear of trouble, and make his life comfortable; and he that does it upon these considerations serves the end of the commandment. But he that forgives it for no other reason but because he cannot have it, he does nothing at all; for though he perform the instance of the law, yet he does nothing toward the end of it.

§ 4. But in human laws the case is something different; for we are only obliged to do nothing against the end of the law: for in this sense is that of the law to be understood, *Fines mandati sunt diligenter custodiendi;—l. 'Diligente,' ff. Mandati*[h]. The ends of the law are with diligence to be kept. But we are no otherwise bound to promote that end than by observing of such means as are appointed; that is, if the good end be only civil and human, and do not also include a duty of religion commanded by God. If the church command a fasting-day in order to a corporal affliction of ourselves and an external ministry of repentance, we are bound to obey it; and though that fasting-day should accidentally be no affliction, yet by virtue of that law we are no further obliged to afflict ourselves. But we are indeed obliged to do nothing that shall be against the end of that law. *Finem certum respicientia non debent contrarium operari;—l. 'Quod favore,' C. de legibus*[i]. We must not caress ourselves with delicious juice of fishes and costly wines upon a fish-day. The reason of these things is briefly this. In human laws the end is not always good; or if it be, it is not always necessary; or if it were in any degree necessary, yet the necessity of it is to be judged by the supreme, and is no otherwise to be estimated necessary by the subject than by the conjecture, the proportion and efficacy of the means or instrument appointed by the supreme to effect that end: and therefore we are bound to restrain

[f] [Exspectes et sustineas, Auguste, necesse est:
Nam tibi quod solvat non habet arca Jovis.—
Mart., lib. ix. epigr. 4. 13.]

[g] Avian. fab. [Incert. inter. fabb. c. interpr. G. Faerno, p. 12. 4to. Rom. 1564.]

[h] [Digest., lib. xvii. tit. 1. l. 5.]

[i] [vid. Cod. Justin, lib. i. tit. 14. l. 6.]

our liberties no more than the law restrains them; and we need not be wiser than the laws: but he that goes against the mind of the law upbraids the insufficiency of her provisions, and shews that he obeys with an ill will.

§ 5. But the laws of God have it in their intention to regulate all the purposes and whole intention of the subject; and therefore our obedience cannot be measured only by the instance of the precept, but by the purpose of it; and because we must serve God with all our heart and all our skill, our duty must be co-extended with all the holiness and designs of God in every commandment; that is, we must do all that which we really suppose God would have to be done in every of His laws, whether it be expressed or only implied. For he that intends the just end of all human actions, that is, the glory of God, can be assured that his purposes are right, when he measures them by their tendency to the end, better than by their commensuration with the expressed means.

§ 6. Χρυσᾶ δὲ τὰ οὐραῖα, said Philostratus[k]. That's the sum of all; we must take care that the end of our actions be all of gold. If they be designed well they are likely to end well; for this is truly χρυσῆν ἐπιτίθεναι κορώνην[l]: for in the service of God a golden head shall never have the fee of clay.

[k] [vid. Imag., lib. ii. cap. 5. et comment. ad loc.]

[l] [ὁ ἀγαθὸν τέλος τοῖς φθάσασιν ἐπιθεὶς χρυσέην ἐπιθεῖναι τῷ πάντι κορώνην λέγεται.]—Eustath. in Iliad. iv. [iii. p. 987. fol. Flor. 1730—5.]

THE END.

NOMINI TUO DA GLORIAM.

ADDITIONAL NOTES AND CORRECTIONS.

PART I. vol. ix.

p. 3, note a, thus, [Sap. vi. 26. ed. vulg. et cf. S. Bernard, &c.]

p. 112, line 5, from below, .. 'summum jus summa injuria.' [Cic. de offic., lib. i. cap. 10.]

p. 289, note t, for 'Dcty' read 'Dicty.'

p. 308, § 2. med. 'Cicero.' [De fin., lib. i. cap. 10.]

p. 552, line 15, from below, . . . 'Non . . ablatum.' [S. Aug. epist. cliii. cap. 6. tom. ii. col. 532 A.]

p. 587, line 6, from below, 'Seneca.' [Lib. iv. controv. 25.]

PART II. vol. x.

p. 34, line 23, 'Melius unus quam unitas.' [S. Aug. apud Lips. polit., lib. iv. cap. 3.]

p. 112, line 24, 'the Greek' &c. [Archetimus of Erythræ,—in loc. comm. ex Stobæo, Antonio Melissa et Maximo monachis, cura Gesner, tit. cxvi. p. 362. fol. Franc. 1581. The same story is incorporated into the life of S. Nicholas in the Aurea legenda of Jacobus de Voragine, and thence probably adapted by Cervantes in his Don Quixote. See the note of Motteux to his edition, vol. v. p. 334. 8vo. Edinb. 1822.]

p. 139, line 9, from below, 'Lara.' [The author has here confused the story of the infants of Lara with that of the infants of Carrion, for which see Southey's Chronicles of the Cid, book x. p. 304 seq. and Mariana, lib. viii. cap. 9. For an account of the 'seven infants of Lara' see the note of Motteux to his Don Quixote, vol. v. p. 345.]

p. 144, § 20, line 6, 'Galeatius Sforza.' [Lips. exempl. polit., lib. ii. cap. 10. § 6.] —line 20, 'Charles the ninth.' [ibid. § 4.] —lin. penult. οὐκ . . ὀλίγιστα. [Plut. apud eund. ibid.]

p. 153, line 3, 'Ut . . pœniteat.' [Sic eorum peccata compesce, ut sint quos pœniteat peccasse.—S. Aug. epist. c. tom. ii. col. 270 B.]

p. 591, line 5, from below, 'Κεῖνος . . πρέσβυς.' [Pind. Pyth. iv. 281.]

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